

Bylaws Reference Document posted (10/15/2018)

Purpose:

This document serves as reference tool for members who wish to have more details regarding Colorado Nonprofit regulations and how they affect Tango Colorado. Important information, definition of terms, case studies, and links to all of the Colorado Revised Nonprofit ACT are provided. Specific sections of Tango Colorado bylaws are also cited. This document is a limited reference tool only.

Section 2.3

General definition:

Inurement,

Any unjust enrichment, whether out of gross or net earnings, may constitute inurement . The presence of control of an organization by a few insiders should lead to close scrutiny for the presence of situations overly beneficial to such insiders. (for the topic of inurement, see <https://www.irs.gov/pub/irs-tege/eotopic90.pdf>)

General definition:

Conflict of interest,

7-128-501. Conflicting interest transaction. (1) As used in this section, "conflicting interest transaction" means: A contract, transaction, or other financial relationship between a nonprofit corporation and a director of the nonprofit corporation, or between the nonprofit corporation and a party related to a director, or between the nonprofit corporation and an entity in which a director of the nonprofit corporation is a director or officer or has a financial interest. (2) No loans shall be made by a corporation to its directors or officers. Any director or officer who assents to or participates in the making of any such loan shall be liable to the corporation for the amount of such loan until the repayment thereof. (3) No conflicting interest transaction shall be void or voidable or be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a member or by or in the right of the nonprofit corporation, solely because the conflicting interest transaction involves a director of the nonprofit corporation or a party related to a director or an entity in which a director of the nonprofit corporation is a director or officer or has a financial interest or solely because the director is present at or participates in the meeting of the nonprofit corporation's board of directors or of the committee of the board of directors that authorizes, approves, or ratifies the conflicting interest transaction or solely because the director's vote is counted for such purpose if: (a) The material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the board of directors or the committee, and the board of directors or committee in good faith authorizes, approves, or ratifies the conflicting interest transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors are less than a quorum; or (b) The material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the members entitled to vote thereon, and the conflicting interest transaction is specifically authorized, approved, or ratified in good faith by a vote of the members entitled to vote

thereon; or (c) The conflicting interest transaction is fair as to the nonprofit corporation. (4) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes, approves, or ratifies the conflicting interest transaction. (5) For purposes of this section, a "party related to a director" shall mean a spouse, a descendent, an ancestor, a sibling, the spouse or descendent of a sibling, an estate or trust in which the director (for conflict of interest, See <http://www.hindmansanchez.com/wp-content/uploads/2011/09/Colorado-Revised-Nonprofit-Code.pdf>)

Excess benefit:

Reference below excerpt from US Master Tax Guide

U.S. Master Tax Guide® (2018), 617, Excess Benefit Transactions of Charitable Organizations An excise tax is imposed on any excess benefit transaction involving a charitable organization under Code Sec. 501(c)(3) other than a private foundation (§631), a social welfare organization under Code Sec. 501(c)(4) (§692), or a qualified nonprofit health insurance issuer under Code Sec. 501(c)(29) (Code Sec. 4958). 32 The tax may be applied instead of, or in addition to, the organization being disqualified as an exempt organization due to the prohibition on private inurement (§602). An excess benefit transaction is any transaction in which an economic benefit is provided to a disqualified person by the organization that exceeds any consideration given. It also includes any grant, loan, or other payment from a donor advised fund (§610) or a qualified supporting organization (§607) to a disqualified person. The tax is imposed on the disqualified person and is 25 percent of the amount of the excess benefit or the amount of the grant, loan, or other compensation received from a donor advised fund or qualified supporting organization. A manager of the exempt organization who knowingly participates in the transaction is subject to a separate excise tax of 10 percent, up to \$20,000 per act. Managers who knowingly participate in the transaction are jointly and severally liable for the 10-percent tax. A manager will not be liable if participation is not willful and due to reasonable cause. For this purpose, a manager includes a director, officer, trustee, and any other individual of the exempt organization with comparable responsibilities. If the excess benefit is not corrected within the taxable period (§614), then a second-tier excise tax is imposed on the disqualified person equal to 200 percent of the amount of the excess benefit, grant, loan, or other payment. If more than one person is liable for either the first- or second-tier taxes on disqualified persons, then these persons are jointly and severally liable for them. The taxes on disqualified persons and organization managers are reported on Form 4720. Both levels of taxes may be abated under certain circumstances (§647). In addition, private foundations are subject to different sanctions (§635). Disqualified Persons. For this purpose, a disqualified person is a person who is in a position to exercise substantial influence over the affairs of the exempt organization (including a qualified supporting organization), regardless of the individual's title. Certain family members and entities in which a disqualified person holds at least a 35-percent ownership interest are also treated as disqualified persons. In the case of any donor advised fund, a disqualified person includes any donor, donor advisor, and investment advisor to the fund, as well as any family member or any entity controlled by such persons. A disqualified person with respect to a qualified supporting organization includes any substantial contributor (§635), family member of a substantial contributor, or a 35-percent controlled entity. Footnotes

Section 3.14

7-136-105. Limitations on use of membership list.

(1) Without consent of the board of directors, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member's interest as a member.

(2) Without limiting the generality of subsection (1) of this section, without the consent of the board of directors a membership list or any part thereof may not be:

- (a) Used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the nonprofit corporation;
- (b) Used for any commercial purpose; or
- (c) Sold to or purchased by any person.

Section 4.4

7-128-501. Conflicting interest transaction. (1) As used in this section, "conflicting interest transaction" means: A contract, transaction, or other financial relationship between a nonprofit corporation and a director of the nonprofit corporation, or between the nonprofit corporation and a party related to a director, or between the nonprofit corporation and an entity in which a director of the nonprofit corporation is a director or officer or has a financial interest. (2) No loans shall be made by a corporation to its directors or officers. Any director or officer who assents to or participates in the making of any such loan shall be liable to the corporation for the amount of such loan until the repayment thereof. (3) No conflicting interest transaction shall be void or voidable or be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a member or by or in the right of the nonprofit corporation, solely because the conflicting interest transaction involves a director of the nonprofit corporation or a party related to a director or an entity in which a director of the nonprofit corporation is a director or officer or has a financial interest or solely because the director is present at or participates in the meeting of the nonprofit corporation's board of directors or of the committee of the board of directors that authorizes, approves, or ratifies the conflicting interest transaction or solely because the director's vote is counted for such purpose if: (a) The material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the board of directors or the committee, and the board of directors or committee in good faith authorizes, approves, or ratifies the conflicting interest transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors are less than a quorum; or (b) The material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the members entitled to vote thereon, and the conflicting interest transaction is specifically authorized, approved, or ratified in good faith by a vote of the members entitled to vote thereon; or (c) The conflicting interest transaction is fair as to the nonprofit corporation. (4) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes, approves, or ratifies the conflicting interest transaction. (5) For purposes of this section, a "party related to a director" shall mean a spouse, a descendent, an ancestor, a sibling, the spouse or descendent of a sibling, an estate or trust in which the director or a party related to a director has a beneficial interest, or an entity in which a party related to a director is a director, officer, or has a financial interest.

Section 4.14

7-128-107. Resignation of directors. (1) A director may resign at any time by giving written notice of resignation to the nonprofit corporation. (2) A resignation of a director is effective when the notice is received by the nonprofit corporation unless the notice states a later effective date. (3) Repealed. (4) If, at the beginning of a director's term on the board, the bylaws provide that a director may be deemed to have resigned for failing to attend a stated number of board meetings, or for failing to meet other stated obligations of directors, and if such failure to attend or meet obligations is confirmed by an affirmative vote of the board of directors, then such failure to attend or meet obligations shall be effective as a resignation at the time of such vote of the board.

7-128-108. Removal of directors. (1) Directors elected by voting members or directors may be removed as follows: (a) The voting members may remove one or more directors elected by them with or without cause unless the bylaws provide that directors may be removed only for cause. (b) If a director is elected by a voting group, only that voting group may participate in the vote to remove that director. (c) Subject to section 7-127-208 (3), a director may be removed only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors. (d) A director elected by voting members may be removed by the voting members only at a meeting called for the purpose of removing that director, and the meeting notice shall state that the purpose, or one of the purposes, of the meeting is removal of the director. (e) An entire board of directors may be removed under paragraphs (a) to (d) of this subsection (1). (f) A director elected by the board of directors may be removed with or without cause by the vote of a majority of the directors then in office or such greater number as is stated in the bylaws; except that a director elected by the board of directors to fill the vacancy of a director elected by the voting members may be removed without cause by the voting members, but not the board of directors. (g) (Deleted by amendment, L. 2000, p. 983, § 83, effective July 1, 2000.) (2) Unless otherwise provided in the bylaws: (a) An appointed director may be removed without cause by the person appointing the director; (b) The person removing the director shall do so by giving written notice of the removal to the director and to the nonprofit corporation; and (c) A removal is effective when the notice is received by both the director to be removed and the nonprofit corporation unless the notice states a later effective date. (3) A designated director may be removed by an amendment to the bylaws deleting or changing the designation. (4) Repealed.
(see: <http://www.hindmansanchez.com/resources/pdf/colorado-revised-nonprofit-act/>)

Section 4.17

(see <http://www.hindmansanchez.com/wp-content/uploads/2011/09/Colorado-Revised-Nonprofit-Code.pdf>, section 7-128-205. Quorum and voting

Section 5.3 Removal.

7-128-107. Resignation of directors. (1) A director may resign at any time by giving written notice of resignation to the nonprofit corporation. (2) A resignation of a director is effective when the notice is received by the nonprofit corporation unless the notice states a later effective date. (3) Repealed. (4) If, at the beginning of a director's term on the board, the bylaws provide that a director may be deemed to have resigned for failing to attend a stated number of board meetings, or for failing to meet other stated obligations of directors, and if such failure to attend or meet obligations is confirmed by an affirmative vote of the board of directors, then such failure to attend or meet obligations shall be effective as a resignation at the time of such vote of the board.

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(see <http://www.hindmansanchez.com/wp-content/uploads/2011/09/Colorado-Revised-Nonprofit-Code.pdf>)

Section 5.13 indemnification clause.

Source= <http://www.hurwitassociates.com/nonprofit-governance-boards-bylaws/sample-bylaw-provision-indemnification>

For a PDF copy of the entire Colorado Revised Nonprofit Corporation Act go to.

Source= <http://www.hindmansanchez.com/wp-content/uploads/2011/09/Colorado-Revised-Nonprofit-Code.pdf>)