

The IRS' New Corporate Policy Expectations For Nonprofits (Form 990)

Presentation Outline of
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The IRS' New Corporate Policy Expectations For Nonprofits (Form 990)

- a. Traditionally, corporate governance policies have been the province of **state laws**, which dictate:
 - (i) Corporate management and control
 - (ii) The structure and independence of nonprofit boards
 - (iii) Standards for addressing conflicts of interest
 - (iv) Compensation practices
 - (v) Insider transaction rules.
- b. The IRS has recently adopted the role of enforcer of good corporate governance, on the theory that good governance is essential to compliance for “tax-subsidized” entities.¹ New Form 990 (phased in 2008-2014) *implies* that nonprofits should have the policies set forth in the following pages.
- c. How should an organization respond?
 - (i) The IRS does not “require” these policies. But there is a fear that “NO” answers on the 990 may trigger a future audit. Furthermore, the IRS’ identification of these policies may be cited as evidence of a new baseline for “prudent practices” in litigation. So, for all practical purposes, the IRS is creating a new compliance obligation.
 - (ii) We recommend:
 - (1) Consider which policy topics apply to your organization. Some policies may not be applicable to a particular organization.
 - (2) Do not adopt “canned” model policies verbatim. Use good models as a starting point, and tailor them to your organization’s needs.
 - (3) These policies can appropriately be placed in your organization’s bylaws. (Before doing so, consider whether your members must vote on bylaw amendments and whether the bylaws approach is desirable, given that these policies may change frequently.)

¹ See *Remarks of Sarah Hill Ingram, Commissioner for Tax Exempt and Government Entities*, June 23, 2009, available at http://www.irs.gov/pub/irs-tege/ingram_gtown_governance_062309.pdf.

- (4) Alternatively, if your organization has a good system for adopting, publishing and maintaining policies of this type (e.g., a readily accessible and frequently used policy handbook or electronic folder), consider this method.

<u>Form 990 Corporate Policies</u>		
<u>Policy</u>	<u>Comments</u>	<u>See Bylaws Sample:</u>
#1. Mission statement (Part III, line 1).		§ 1.1
#2. Local branches, chapters, and affiliates (Part VI, Question 9b)	If an organization had local chapters, branches or similar affiliates during the year, the Form 990 asks if there are written policies and procedures governing their activities to ensure consistency with the activities of the organization. If the answer to this question is No, an explanation is required in Schedule O as to how the organization ensures that the local unit's activities are consistent with its own.	N/A – This is usually addressed in the form of a comprehensive “charter” for the organization and its membership.
#3. Review of Form 990 (Part VI, Question 10)	Organizations must describe in Schedule O the process, if any, the organization uses to review the Form 990. While no process to review the Form 990 is required, a simple procedure may be appropriate to indicate if and when the board receives the Form 990 and the process for handling questions/comments from the board.	§ 8.11
#4. Conflicts of interest policy (Part VI, Question 12 a-c)	Organizations are asked if they have a written conflict of interest policy, if certain individuals are required to disclose annually interests that could give rise to conflicts (a questionnaire might accomplish this disclosure), and how the organization regularly and consistently monitors and enforces compliance with the policy. An explanation is required on Schedule O of how this is done.	§ 7. Note that this sample closely follows the IRS' own sample policy.

#5. Whistleblower policy (Part VI, Question 13)	Organizations are asked if they have a written whistleblower policy.	§ 8.10
#6. Document retention and destruction policy (Part VI, Question 14)	Organizations are asked if they have a written document retention and destruction policy.	Exhibit A
#7. Compensation approval of top management official and key employees (Part VI, Question 15 a-b)	Organizations are asked to describe on Schedule O the process for determining compensation, including a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision relating to the organization's CEO, Executive Director, or top management official plus other officers or key employees.	§ 5.11
#8. Joint venture policy (Part VI, Question 16 a-b)	Organizations are asked if they invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity. If Yes, the organization is asked if it has adopted a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable Federal tax law, and taken steps to safeguard the organization's exempt status with respect to such arrangement.	§ 8.4
#9. Public inspection of Form 1023, 990, and 990-T (Part VI, Question 18)	Organizations are asked how they make these forms available for public inspection. This question suggests an organization should have a procedure. ²	§ 8.12

² There are many documents that are covered under the disclosure law, including IRS Forms 990, 990-EZ, 990-PF, and 1023 and an organization's IRS determination letter.

- **Form 990 or 990-EZ.** With the exception of most faith-based organizations, tax-exempt nonprofits must file this return annually with the IRS. The three most recent returns must be made available along with any filed attachments, although the names and addresses of contributors must be masked on copies made available to the public. Amounts of contributions and bequests must be disclosed, unless they would identify contributors.
- **Form 990-PF.** A private foundation must follow the disclosure rules that apply to Forms 990 and 990-EZ.
- **Form 1023 or 1024.** A charitable organization's application for exemption (Form 1023 or 1024), any attachments to the application, and any materials the IRS requests in connection with the application must also be disclosed.
- **Letter of determination.** An organization must make its letter of determination available to the public.

[footnote continued on next page]

<p>#10. Disclosure of governing documents, conflict of interest policy, and financial statements (Part VI, Question 19)</p>	<p>Organizations are asked if they make governing documents, conflicts of interest policy, and financial statements available to the public. This question suggests an organization should have a procedure. However, <i>such disclosures are generally not required by law.</i></p>	<p>N/A.</p>
<p>#11. Policy for the payment of a housing allowance, first class or charter travel, spousal travel, gross-up payments, discretionary spending, health or social club dues, etc. (Schedule J, Question 1b)</p>	<p>This is a subject for which there are no “bright line” rules.</p>	<p>§§ 8.5 – 8.9</p>
<p>#12. Gift acceptance policy for non-standard gifts (Schedule M, Question 31)</p>	<p>Organizations that meet the \$25,000 gifts-in-kind threshold for filing this schedule are asked if they have a gift acceptance policy that requires the review of any non-standard contributions.</p>	<p>§ 6</p>
<p>#13. Soliciting, processing, or sale of non-cash contributions (Schedule M, Question 32 a-b)</p>	<p>Organizations that meet the \$25,000 gifts-in-kind threshold for filing this schedule are asked if they hire or use third parties or related organizations to solicit, process, or sell non-cash contributions. If Yes, a description is required in Part II of Schedule M.</p>	<p>§ 6.2.k.</p>

[footnote continued from previous page]

If this information is requested in person at a nonprofit's principal office, generally the organization must provide the information that day. If the information is requested in writing, the organization usually has 30 days to comply.

Keep in mind that organizations do have the right to charge the requester "reasonable copying costs" for the document in question. The allowable charge is the same amount charged by the IRS for providing copies—\$1.00 for the first page and \$.15 for each subsequent page.

What happens if the information is not supplied? The penalty for not disclosing an annual return is \$20 per day for as long as the failure to comply continues, up to a maximum of \$10,000 maximum fee per return not disclosed. There is no maximum fee for failure to provide the application for exemption.

Organizations that do not wish to provide hard copies of these document(s) do have another option: they can post a copy on their Web site.

#14. Policy on acceptance of conservation easements (Sch. D, Part II, line 5)	This applies to a very limited set of environmental and land-trust organizations.	N/A
#15. Board independence policy (Part I, line 4; Part VI, line 15)	Note that California law requires a majority of the board to be “independent” outsiders.	§ 4.3
#16. Policy on endowments (Sch. D, Part V, line 4)	Any organization that accepts endowment gifts should have a policy	§ 4.19
#17. Committee review and oversight of audit and selection of independent accountant (Part XI, line 2)	Note that California law requires an audit for any year in which revenues exceed \$2 million (including an extraordinary bequest).	§ 4.18

Following Pages: Sample Bylaws Including 990 Policies

Sample Bylaws Including 990 Policies

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Note: The policies set forth in these bylaws are a model only; each organization should tailor its policies to its own needs and practices. These bylaws are based on California corporate law and are for a 501(c)(3) charity with no members.

Bylaws of ABC Charity of Northern California

a California Nonprofit Public Benefit Corporation

1. MISSION

1.1. The mission of the ABC Charity of Northern California is to [].

2. OFFICES

2.1. **Principal Office.** The Corporation's principal office is located at [address]. The Board of Directors (below called the "Board") may change the location of the principal office by resolution at any time.

2.2. **Other Offices.** Additional offices may be established at any time by the Board at any place or places.

3. MEMBERSHIP

3.1. **Members.** The Corporation shall have no members. Any action which would otherwise require approval by a majority of all members or approval by the members shall require only approval of the Board. All rights which would otherwise vest in the members shall vest in the directors.

3.2. **Other "Members."** Nothing in this Section 3 shall limit the right of the corporation to refer to persons associated with it as "members" even though those persons are not members, and no such reference shall constitute anyone a member, within the meaning of Section 5056 of the California Nonprofit Corporation Law. The corporation may confer by amendment of its Articles or of these Bylaws some or all of the rights of a member, as set forth in the California Nonprofit Corporation Law, upon any person or persons who do not have the right to vote for the election of directors or on a disposition of substantially all of the assets of the corporation or on a merger or on a dissolution or on changes to the corporation's Articles or Bylaws or for the selection of delegates who possess any of the preceding voting rights, but no such person shall be a member within the meaning of Section 5056.

4. DIRECTORS

4.1. **Board of Directors.** Subject to limitations of the Articles of Incorporation of the Corporation (the "Articles") and these Bylaws, the activities and affairs of the Corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board of Directors ("Board"). The Board may delegate the management of the activities of the Corporation to any person or persons, a management company, or committees however composed, provided that the activities and affairs of the Corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board. Without prejudice to these general powers, but subject to the provisions just stated, it is hereby expressly declared that the

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Board shall have the following powers in addition to the other powers enumerated in these Bylaws:

- a. To select and remove all the other officers, agents, and employees of the Corporation, prescribe qualifications, powers, and duties for them that are not inconsistent with law, the Articles, or these Bylaws, fix their compensation, and require from them security for faithful service.
- b. To conduct, manage, and control the affairs and activities of the Corporation and to make such rules and regulations therefor not inconsistent with law, the Articles, or these Bylaws, as they may deem best.
- c. To adopt, make, and use a corporate seal and to alter its form from time to time as the Board may deem best.
- d. To borrow money and incur indebtedness for the purposes of the Corporation, and to cause to be executed and delivered therefor, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, or other evidences of debt and securities for debt.
- e. To carry on a business at a profit and apply any profit that results from the business activity to any activity in which it may lawfully engage.

4.2. Number of Directors. The authorized number of directors shall be not less than three and not more than nine until changed by amendment of these Bylaws, with the exact number of directors to be fixed, within the foregoing range, by approval of the Board. When the Board acts to elect or appoint one or more new directors, or when the Board acknowledges any resignation or other event resulting in a vacancy, it will be implied, unless the Board specifically states to the contrary, that the resulting number of sitting directors is the new number of directors “fixed by approval of the Board” in accordance with the foregoing sentence.

4.3. Board Independence. No more than 49 percent of the Board shall be comprised of interested persons. An “interested person” is someone who (1) is currently compensated by the Corporation within the last 12 months for services rendered, either as a full-time or part-time employee, independent contractor or otherwise; or (2) any relative, spouse or descendent of someone described in (1) above.

4.4. Selection and Term of Office. Directors shall be elected at each annual meeting of the Board. Each director shall serve until the next annual meeting of the Board and until a successor has been elected and qualified.

4.5. Vacancies. Any director may resign effective upon giving written notice to the Chair of the Board, the President, the Secretary, or the Board, unless the notice specifies a later time for the effectiveness of the resignation; provided that, except upon notice to the Attorney General, no director may resign if the Corporation would then be left without a duly elected director or directors in charge of its affairs. If the resignation is effective at a future time, a successor may be selected before that time, to take office when the resignation becomes effective. Vacancies in the Board shall be filled in the same manner as the director(s) whose office is vacant was selected, provided that vacancies to be filled by election by directors may be filled by a majority of the

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remaining directors, although less than a quorum, or by a sole remaining director. Each director so selected shall hold office until the expiration of the term of the replaced director and until a successor has been selected and qualified. Subject to the provisions of the last sentence of Section 4.1.e, a vacancy or vacancies in the Board shall be deemed to exist in case of the death, resignation, or removal of any director, or if the authorized number of directors is increased. The Board may declare vacant the office of a director who has been declared of unsound mind by a final order of court, or convicted of a felony, or found by a final order of judgment of any court to have breached any duty arising under Article 3 of the California Nonprofit Public Benefit Corporation Law, or who has failed to attend three consecutive meetings of the Board. No reduction of the authorized number of directors shall have the effect of removing any director before expiration of the director's term of office.

- 4.6. Place of Meeting.** Meetings of the Board shall be held at any place within or without the State of California that has been designated from time to time by the Board. In the absence of designation by the Board, the annual and regular meetings shall be held at the principal office of the Corporation.
- 4.7. Annual Meetings.** The Board shall hold an annual meeting for the purpose of organization, selection of directors and officers, and the transaction of other business. The Board shall fix a date each year for the annual meeting that is no more than 15 months after the prior annual meeting.
- 4.8. Regular Meetings.** Regular meetings of the Board shall be held without call or notice on dates and at times fixed by the Board.
- 4.9. Special Meetings.** Special meetings of the Board for any purpose or purposes may be called at any time by the Chair of the Board, the President, any Vice President, the Secretary, or any two directors. Special meetings of the Board shall be held upon five days' notice by first-class mail or 48 hours' notice given personally or by telephone (including a voice messaging system or other system or technology designed to record and communicate messages), telegraph, facsimile, electronic mail, or other electronic means. Any such notice shall be addressed or delivered to each director at the director's address as shown upon the records of the Corporation or as may have been given to the Corporation by the director for purposes of notice or, if the address is not shown on the Corporation's records or is not readily ascertainable, at the place where the meetings of the directors are regularly held. Notice by mail shall be deemed to have been given at the time a written notice is deposited in the United States mails, postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic means, to the recipient. Oral notice shall be deemed to have been given at the time it is communicated, in person or by telephone or wireless, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the receiver.
- 4.10. Quorum.** A majority of the authorized number of directors constitutes a quorum of the Board for the transaction of business, except to adjourn as provided in Paragraph 4.13. Every act or decision done or made by a majority of the directors present at a meeting

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duly held at which a quorum is present is the act of the Board, unless a greater number is required by law or by the Articles, except as provided in the next sentence. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

4.11. Participation in Meetings by Telephone and Electronic Transmission. Members of the Board may participate in a directors' meeting through use of conference telephone, electronic video screen communication or electronic transmission by and to the Corporation. Participation in a directors' meeting through use of conference telephone or electronic video screen communication constitutes presence in person at that meeting as long as all members participating in the meeting are able to hear one another.

4.12. Waiver of Notice. Notice of a meeting need not be given to any director who signs a waiver of notice or a written consent to holding the meeting or an approval of its minutes, whether before or after the meeting, or who attends the meeting without protesting, before or at its commencement, the lack of notice to that director. All waivers, consents, and approvals as to a Board meeting shall be filed with the corporate records or made a part of the minutes of the meeting.

4.13. Adjournment. A majority of the directors present, whether or not a quorum is present, may adjourn any Board meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place is fixed at the meeting adjourned, except as provided in the next sentence. If the meeting is adjourned for more than 72 hours, notice of any adjournment to another time or place shall be given before the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

4.14. Action Without Meeting. Any action required or permitted to be taken by the Board may be taken without a meeting if all directors individually or collectively consent in writing to the action. The consent or consents shall have the same effect as a unanimous vote of the Board and shall be filed with the minutes of the proceedings of the Board.

4.15. Annual Report. The Board shall cause an annual report to be distributed to all directors not later than 120 days after the close of the Corporation's fiscal year. The report shall set forth all of the following in appropriate detail:

- a. The assets and liabilities, including the trust funds, of the Corporation as of the end of the fiscal year for which the report is prepared. This shall clearly identify assets and liabilities belonging to each trust fund held by the corporation;
- b. The principal changes in assets and liabilities, including trust funds, during the fiscal year covered by the report;
- c. The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, for the fiscal year covered by the report;
- d. The expenses or disbursements of the Corporation, for both general and restricted purposes, during the covered fiscal year; and

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- e. Information as to transactions with interested persons and indemnifications, pursuant to California Corporations Code section 6322.

4.16. Rights of Inspection. Every director shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents of every kind and to inspect the physical properties of the Corporation of which such person is a director.

4.17. Committees. The Board may appoint one or more committees, each consisting of two or more directors, and delegate to those committees any of the authority of the Board except authority to:

- a. Fill vacancies on the Board or on any committee;
- b. Fix compensation of directors for serving on the Board or on any committee;
- c. Amend or repeal bylaws or adopt new bylaws;
- d. Amend or repeal any resolution of the Board which by its express terms is not so amendable or repealable;
- e. Appoint other committees of the Board or members of other committees;
- f. Expend corporate funds to support a nominee for director after there are more people nominated for director than can be elected; or
- g. Approve any self-dealing transaction, as those transactions are defined in Section 5233(a) of the California Nonprofit Public Benefit Corporation Law. (Corporations code Section 5233(a).)

Any committee to which any authority of the Board is delegated may only be created, and its members appointed, by resolution adopted by a majority of the authorized number of directors then in office, provided a quorum is present. Any such committee may be designated an Executive Committee or given another name as the Board shall specify. The Board may appoint, in the same manner, alternate members of any committee who may replace any absent member at any meeting of the committee. The Board shall have the power to prescribe the manner in which proceedings of any of these committees shall be conducted. In the absence of prescription by the Board, a committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless the Board or a committee shall otherwise provide, the regular and special meetings and other actions of any such committee shall be governed by the provisions of this Section 4 applicable to meetings and actions of the Board.

4.18. Audit Committee. The Audit Committee shall assist the Board in fulfilling its oversight responsibilities by reviewing the financial information, reviewing the systems of internal controls which management and the Board have established, appointing, retaining and overseeing the performance of independent accountants and overseeing the accounting and financial reporting processes and the audits of the Corporation's financial statements.

The Audit Committee shall be given full and direct access to the Corporation's Chair of the Board, the President and independent accountants as necessary to carry out these responsibilities. However, the Committee's function is one of oversight only and shall

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not relieve management of its responsibilities for preparing financial statements which accurately and fairly present the Corporation's financial results and condition, or the responsibilities of the independent accountants relating to the audit or review of financial statements.

- a. Composition of the Committee.** The Audit Committee shall be comprised of not less than two directors. Each appointed Audit Committee member shall be subject to annual reconfirmation and may be removed by the Board at any time. All members of the Audit Committee should be able to read and understand fundamental financial statements, including a balance sheet, income statement and cash flow statement.
- b. Responsibilities & Duties.** To fulfill its responsibilities and duties, the Audit Committee shall:
- (i) Review the significant accounting principles, policies and practices followed by the Corporation in accounting for and reporting its financial results of operations in accordance with generally accepted accounting principles ("GAAP").
 - (ii) Review the financial and risk management policies or practices followed by the Corporation in operating its business activities.
 - (iii) Review the Corporation's annual audited financial statements, related disclosures, including the MD&A portion of the Corporation's filings, and discuss matters required to be discussed by Statement on Auditing Standards No. 61, as amended, including (a) the quality as well as acceptability of the accounting principles applied in the financial statements, and (b) new or changed accounting policies; significant estimates, judgments, uncertainties or unusual transactions; and accounting policies relating to significant financial statement items.
 - (iv) Review any management letters or internal control reports prepared by the independent accountants or the Corporation's internal auditors and responses to prior management letters, and review with the independent accountants the Corporation's internal financial controls, including the budget, staffing and responsibilities of the Corporation's Internal Control Services department.
 - (v) Review the effectiveness of the independent audit effort, including approval of the scope of, and fees charged in connection with, the annual audit, quarterly reviews and any non-audit services being provided.
 - (vi) Be directly responsible for the appointment, determination of the compensation for, retention and oversight of the work of the independent accountant employed to conduct the audit (including resolution of disagreements between the independent accountants and management regarding financial reporting) or other audit, review or attest services. Any independent accountants shall report directly to the Committee.
- c. Audit Committee Meetings.** The Audit Committee will meet at least once each year, and will hold special meetings as circumstances require. The timing of the meetings to be scheduled for an upcoming fiscal year shall be determined by the Committee.

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4.19. Endowment Committee. The Endowment Committee, also established in accordance with these Bylaws, and aided as necessary by staff members, shall administer the ongoing activities of the Endowment, if and when applicable. The Endowment Committee shall meet at least quarterly, keep a record of proceedings, and report the same to the Board of Directors at the meeting.

- a. Funding.** Funds from many sources should be encouraged and solicited to meet the long-term needs of The ABC Charity of Northern California through the Endowment. However, the Endowment Committee shall review all donations before acceptance, and can decline any gifts for whatever reason. Donations to the Endowment shall be considered unrestricted as to their end use, unless given with a purpose or time restriction by the donors. The Committee shall ensure proper records and controls are maintained to comply with donors' specific conditions, and also that records are maintained of the "initial contribution" amount (defined as amounts contributed by donors directly to the Endowment, plus the "quasi endowment" originally designated by Board action). It shall be the intent that unrestricted gifts from estates and from planned giving sources (such as charitable remainder trusts) will go into the Endowment, rather than to operating funds. Such monies, however, will not be added to the Endowment until a financial review near the end of each fiscal year determines that the new funds are not needed for operations.
- b. Expenditures of Endowment Funds.** The basic concept of endowments is to provide funding for long-term needs, whereby the funds contributed by donors are not spent immediately, but are invested to provide a stream of earnings which can then be used (or compounded). In this light, the Endowment Committee and the Board are encouraged to spend as "lightly" as possible for the first several years of the Endowment. Even so, the Endowment Committee will, near the end of each fiscal year, recommend to the Board an amount (if any) to be transferred from the Endowment for general corporate purposes in the forthcoming year. The amount generally will be calculated as a percent of the net assets of the fund at current values.
 - (i) Expending any amount of more than ___% of the net value of the Endowment, calculated as of January 1 of the current fiscal year, will require a Finance Committee recommendation. An affirmative vote of 75% of the entire Board then serving is required.
 - (ii) Expending any portion of the "initial contribution" to the Endowment (as defined above) will require a Finance Committee recommendation and the affirmative vote of 75% of the entire Board then serving.
 - (iii) The Committee also shall make decisions on spending from restricted gifts and funds, to the extent that donors' restrictions allow leeway.
- c. Investments.** Investing the funds of the Endowment shall be done in accordance with the separate Investment Policy.

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4.20. Fees and Compensation. Directors and members of committees may receive such compensation, if any, for their services, and such reimbursement for expenses, as may be fixed or determined by the Board.

5. OFFICERS

5.1. Officers. The officers of the Corporation shall be a President, a Secretary, and a Treasurer. The Corporation may also have, at the discretion of the Board, a Chair of the Board, one or more Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers, and such other officers as may be elected or appointed in accordance with the provisions of Paragraph 5.3. Any number of offices may be held by the same person except as provided in the Articles, these Bylaws, and applicable law. Pursuant to Corporations Code section 5213, neither the Secretary nor the Treasurer may serve concurrently as the President or the Chair of the Board.

5.2. Appointment. The officers of the Corporation, except officers appointed in accordance with the provisions of Paragraph 5.3 or 5.5, shall be chosen annually by, and shall serve at the pleasure of, the Board. Each officer shall hold office until his or her resignation, removal, or other disqualification from service, or until his or her respective successor shall be elected.

5.3. Subordinate Officers. The Board may appoint, and may empower the President to appoint, such other officers as the business of the Corporation may require. Each such officer shall hold office for the period, have authority, and perform duties as provided in these Bylaws or as the Board or appointing officer may from time to time determine.

5.4. Removal and Resignation. Any officer may be removed, either with or without cause, by the Board at any time or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board. Any removal of an officer shall be without prejudice to his or her rights, if any, under any contract of employment. Any officer may resign at any time by giving written notice to the Corporation addressed and sent to the Board, the President, or the Secretary, but without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party. An officer's resignation shall take effect at the date notice of resignation is received by the addressee or at any later time specified in the resignation and, unless otherwise specified in the resignation, the acceptance of the resignation shall not be necessary to make it effective.

5.5. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointment to the office, provided that vacancies may be filled as they occur and not on an annual basis.

5.6. Chair of the Board. The Chair of the Board, if there is such an officer, shall, if present, preside at all meetings of the Board and exercise and perform other powers and duties as from time to time assigned by the Board.

5.7. President. Subject to the powers, if any, given by the Board to the Chair of the Board, if there is such an officer, the President is the general manager and chief executive

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officer of the Corporation and has, subject to the control of the Board, general supervision, direction, and control of the business and officers of the Corporation. In the absence of the Chair of the Board, or if there is none, the President shall preside at all meetings of the Board. The President has the general powers and duties of management usually vested in the office of president and general manager of a Corporation and such other powers and duties prescribed by the Board.

5.8. Vice Presidents. In the absence or disability of the President, the Vice Presidents, if any are appointed, in order of their rank as fixed by the Board or, if not ranked, the Vice President designated by the Board, shall perform all the duties of the President. A Vice President so acting shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice Presidents shall have other powers and perform other duties respectively prescribed for them by the Board.

5.9. Secretary. The Secretary shall keep or cause to be kept, at the principal office or other place ordered by the Board, a book of minutes of all meetings of the Board and its committees, with the time and place of holding, whether regular or special, and if special, how authorized, the notice given of the meeting, the names of those present at Board and committee meetings, and the proceedings of the meetings. The Secretary shall keep, or cause to be kept, at the principal office in the State of California the original or a copy of the Corporation's Articles and Bylaws, as amended to date. The Secretary shall give, or cause to be given, notice of all meetings of the Board and any committees of the Board required by these Bylaws or by law to be given, shall keep the seal of the Corporation in safe custody, and shall have other powers and perform such other duties prescribed by the Board.

5.10. Treasurer. The Treasurer is the chief financial officer of the Corporation and shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Corporation. The books of account shall at all times be open to inspection by any director. The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Corporation with depositaries designated by the Board. The Treasurer shall disburse the funds of the Corporation as ordered by the Board, shall render to the President and the directors, whenever they request it, an account of all transactions as Treasurer and of the financial condition of the Corporation, and shall have other powers and perform other duties prescribed by the Board.

Notwithstanding the foregoing, at any time when the Treasurer is a volunteer who is also a Director, the Treasurer's responsibilities shall be limited to (a) a periodic review of the financial records prepared by management and a periodic report to the Board on (i) the Corporation's financial condition and results and (ii) the Treasurer's recommendations regarding financial management issues affecting the Corporation, and (b) any other duties or authority which may be specifically assigned by the Board.

5.11. Compensation. The following persons employed by the Corporation: 1) directors; 2) officers; and 3) key employees of the Corporation, shall be compensated in accordance with the following:

a. Review and approval. Compensation of the person shall be reviewed and approved

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by the Board or Compensation Committee of the Corporation, provided that persons with conflicts of interest with respect to the compensation arrangement abstain from participating in meetings and voting therein.

- b. Use of data as to comparable compensation.** The compensation of the person shall be reviewed and approved using data as to comparable compensation for similarly qualified persons in functionally comparable positions in similarly situated Corporations.
- c. Contemporaneous documentation and recordkeeping.** There shall be contemporaneous documentation and recordkeeping with respect to the deliberations and decisions regarding the compensation arrangement.

6. GIFTS AND ENDOWMENTS.

6.1. Gift Acceptance. The purpose of these guidelines is to protect the interests of the donor, the Corporation, or causes named as the beneficiary of a gift. To ensure all gifts to the Corporation are structured to provide maximum benefits to the donor and the named entity. To encourage interested donors to make gifts without encumbering their own or the Corporation's financial or other resources. To optimize opportunities to secure gifts from individuals to causes without compromising or endangering the reputation of the Corporation.

6.2. General Guidelines.

- a.** No irrevocable gift, whether outright or life-income in character, will be accepted if under any reasonable set of circumstances the gift would jeopardize the donor's financial security.
- b.** Any gift presented to the Corporation without the approval of the Board shall not be received until after it is determined that the intended gift and the manner in which it is given is in the best interest of the donor.
- c.** The Board shall be apprised of any potential gift or bequest to the Corporation. Each case shall be reviewed on a regular basis by the Board to ensure proper action, accounting, and acknowledgement surrounding each gift.
- d.** Donors should always be advised of their own need for legal counsel to assist them in the process of making their gift. Members of the Board shall avoid becoming involved in what can be interpreted as unauthorized practice of law; any suggestions made to a donor on behalf of the Corporation shall be accompanied by encouragement to seek advice from the donor's personal counsel and/or financial advisors.
- e.** Every precaution shall be taken by the Board to protect the privacy and confidentiality of each donor and the donor's family. Permission must be obtained before any public acknowledgement is made of gifts received by the Corporation. The right of anonymity must always be respected.
- f.** A member of the Board shall meet with each individual donor prior to or concurrent with the execution of a gift agreement. In the case of charitable remainder trusts or

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other complex arrangements such a meeting is mandatory. All complex arrangements must be reviewed by counsel as approved by the Board.

- g.** Any professional advisors such as Attorneys or CPA's hired by the Corporation must recognize their client is the Corporation, and that they do not represent the donor. Professional advisors for the Corporation will always seek to work with the separate advisors for the donor.
- h.** Gifts shall not be accepted where the mental competency of the donor is in question. However this does not preclude a person acting in the capacity of Attorney-in-fact from making a gift from the estate of the individual granting the Power of Attorney. In this event every consideration shall be given to the donor's charitable giving habits and financial condition to ensure that the gift is in the best interest of the donor and is carried out in a prudent manner. The donor's Power of Attorney must specifically grant the power to make charitable gifts.
- i.** The Corporation will provide gifts receipts meeting IRS substantiation requirements for property received by the Corporation as a gift. However, except for gifts of cash and publicly traded securities, no value shall be ascribed to any receipt or other form of substantiation of a gift received by the Corporation.
- j.** Investment considerations and gift considerations are in all cases to be evaluated separately, each on their respective merits. In no event shall the offer of a gift be tied in any way to an investment action or decision by the Corporation.
- k.** The Corporation shall in no way compensate, whether through commissions, finders' fees, or other means, any third party for directing a donor to the Corporation.
- l.** All written instruments setting out the description and terms of a gift shall be reviewed by legal counsel on behalf of the Corporation and a written report made to the Board on its compliance with applicable laws and regulations as well as an explanation of its potential liability to the Corporation.

6.3. Types of Gifts

- a.** Both current gifts and deferred gifts shall be actively encouraged. Response to each type of gift should be prompt without regard to the monetary value or timing of the individual gift. The decision to accept or reject any gift, whether current or deferred, shall be weighed on the merits of the individual gift, always regarding the donor's intent and financial condition as well as the benefit to the Corporation's causes.
- b.** Any gift subject to a restriction shall be accepted, only after review by the Corporation's counsel and/or the Board. Every effort shall be made to ensure the restrictions on the gift do not negate any potential benefit to the intended cause. Also the restrictions should not encumber the Corporation with excessive additional responsibilities as to make the gift inadvisable.
- c.** The Corporation should not be engaged in the execution of notarial wills. The Corporation may, however, provide gift clauses for inclusion in wills by donors and/or their personal counsel.

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- d.** Gifts of real estate are acceptable only after the following criteria are met:
- (i) A personal inspection is conducted on behalf of the Corporation.
 - (ii) Determination is made that the property has not been utilized in a manner that would cause embarrassment to the Corporation.
 - (iii) An appraisal satisfactory to the IRS gift substantiation requirements has been completed and the Corporation and donor have reached an understanding as to the valuation of the property.
 - (iv) Debt, insurance, homeowners' association fees, property taxes and other carrying costs have been assessed as to the effect on the advisability of taking the gift.
 - (v) Appropriate steps have been taken to determine if any other liabilities might attach to the property such as leases, contracts, or servitudes.
 - (vi) All pertinent information regarding the property is supplied by the donor. This would include names of owners and co-owners (and percentage ownership), recent tax statements, address and/or legal description, and description of current use.
 - (vii) Donor must convey all his/her undivided interest in the real estate including any mineral interests. The IRS will not consider a gift of partial interest and would disqualify such a gift from income and estate tax deductions.
 - (viii) The Corporation may recover any costs of managing real estate by charging a fee that is determined by the schedule set by the Board.
 - (ix) The donor must be willing to bear the costs associated with the gift of real estate, such as legal fees, real estate commissions, management fees, and appraisals, or have these costs deducted from the sale of the property.
 - (x) The Board must approve any exception.
- e.** Gifts of real estate are ordinarily acceptable only after it has been determined that no reasonable possibility exists that the property could be contaminated by toxic waste. An initial personal inspection shall be made on behalf of the Corporation. This inspection shall include both a physical inspection and an investigation of the recent ownership history of the property. If, after inspection, it is determined that there is a substantial likelihood that the property has been environmentally impacted, the property may not be accepted. If, after inspection, it is determined that a reasonable possibility exists that the property has been environmentally impacted, an inspection must be made by a licensed environmental consultant, who must certify, within the context of a Phase 1 Site Assessment, that no contamination exists before the property may be accepted. The inspection should be performed in general conformance with the scope of ASTM Practice E1527. The expense of inspection must be borne by the donor unless an exception is approved by the Board.
- f.** Gift annuity contracts are to be entered into by the Corporation upon approval of the Board. In no event shall a gift annuity contract be agreed to which pays an income

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at a rate in excess of an actuarially prudent rate of return. The Corporation will invest the gift in a manner that will attempt to protect the integrity of the principle amount given. Gift annuities will not be funded with real estate or other illiquid assets. Donors must be reminded in correspondence or conversation with them and their advisors that a qualified charitable gift annuity is not insurance under the laws of their State.

- g.** Gifts of life insurance shall be accepted after examination of funding of the policy and the gift substantiation requirements.
- h.** Where a personal residence is the subject of a gift, it will not be accepted without the approval of the Board, if the right to utilize the residence is vested in a person other than the donor. Gifts of personal residences will be subject to the Corporation's real estate policies and environmental assessment procedures.
- i.** Gifts of oil and gas rights may be received absent extenuating circumstances such as extended liabilities or other conditions making receipt of the gift inadvisable. In that regard, each potential oil and gas gift shall be examined by a professional advisor with experience in mineral leases for such extenuating circumstances which would argue against receipt of the gift. Working interests in oil and gas, which entail special problems regarding taxation either to the Corporation generally or to individual trusts which receive the gifts, and may also entail extended liabilities for personal, property and environmental damage should not be considered.

6.4. Endowments. For Endowments guidelines, see section 4.19.

7. CONFLICTS OF INTEREST

7.1. Purpose. The purpose of this Conflict of Interest Policy (this "Conflict Policy") is to protect the interests of The ABC Charity of Northern California when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an Officer or Director or might result in a possible excess benefit transaction. This Conflict Policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit organizations.

7.2. Definitions.

- a.** Interested Person. Any Director, Officer or member of a committee with Board-delegated powers, who has a direct or indirect Financial Interest, as defined below, is an Interested Person.
- b.** Financial Interest. A person has Financial Interest if the person has, directly or indirectly, through business, investment, or family:
 - (i) An ownership or investment interest in any entity with which The ABC Charity of Northern California has a transaction or arrangement.
 - (ii) A compensation arrangement with The ABC Charity of Northern California or with any entity or individual with which The ABC Charity of Northern California has a transaction or arrangement; or

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- (iii) A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which The ABC Charity of Northern California is negotiating a transaction or arrangement.

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. Under Section 6.3b below, a person who has a Financial Interest may have a conflict of interest only if the Board or committee, as the case may be, decides that a conflict of interest exists.

7.3. 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 Board considering the proposed transaction or arrangement.
- b. **Determining Whether a Conflict of Interest Exists.** After the Interested Person discloses the Financial Interest and all material facts to the Board, and after any discussion, the Interested Person shall leave the Board meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board members shall decide if a conflict of interest exists.
- c. **Procedures for Addressing the Conflict of Interest.**
 - (i) An Interested Person may make a presentation at the Board meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
 - (ii) The chairperson of the Board meeting shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
 - (iii) After exercising due diligence, the Board or committee shall determine whether The ABC Charity of California 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.
 - (iv) If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board shall determine by a majority vote of the disinterested Directors, whether the transaction or arrangement is in The ABC Charity of Northern California's best interests, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, the Board shall make its decision as to whether to enter into the transaction or arrangement.
 - (v) The decision of the Board as to whether to enter into the transaction or arrangement with the Interested Person may be effected by unanimous written

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consent in lieu of a Board meeting, as allowed by law, provided that the Interested Person abstains from the vote in writing.

- (vi) The ABC Charity of Northern California shall provide all Board members with an annual report listing all transactions with or indemnification of any Interested Person, as and in the manner required by applicable law, including but not limited to California Corporations Code § 6322.
- (vii) Prior to approving a transaction with an Interested Person, the Board of The ABC Charity of Northern California shall consider, with the advice of counsel, whether to notify the California Attorney General, as permitted by Title 11 California Code of Regulations § 999.2, and whether to seek the prior approval of the Attorney General.

d. Violations of the Conflict of Interest Policy.

- (i) If the Board or committee has reasonable cause to believe an Interested Person has failed to disclose actual or possible conflicts of interest, it shall inform the Interested Person of the basis for such belief and afford the Interested Person an opportunity to explain the alleged failure to disclose.
- (ii) If, after hearing the Interested Person's response and after making further investigation as warranted by the circumstances, the Board, or committee, as the case may be, determines the Interested Person has failed to disclose an actual or possible conflict of interest, the Board shall take appropriate disciplinary and corrective action.

7.4. Records of Proceedings. The minutes of the Board and all committees with Board-delegated powers shall contain:

- a.** 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 Board's decision as to whether a conflict in fact existed.
- b.** The names of the persons who were present for discussions and 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.

7.5. Compensation.

- a.** A voting member of the Board who receives compensation, directly or indirectly, from The ABC Charity of Northern California for services is precluded from voting on matters pertaining to that member's compensation.
- b.** A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from The ABC Charity of Northern California for services is precluded from voting on matters pertaining to that member's compensation.

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c. No voting member of the Board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from The ABC Charity of Northern California, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

7.6. Annual Statements. Each Director, Officer and member of a committee with Board-delegated powers shall annually sign a statement which affirms such person has read and understands this Conflict Policy as part of the bylaws of this corporation, has agreed to comply with this Conflict Policy and understands that The ABC Charity of Northern California is nonprofit and in order to maintain its federal exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

7.7. Periodic Reviews. To ensure The ABC Charity of Northern California operates in a manner consistent with nonprofit purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable, based on competent survey information and the result of arm's length bargaining.
- b. Whether partnerships, joint venture and arrangements with management organizations conform to The ABC Charity of Northern California's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further nonprofit purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

7.8. Use of Outside Experts. When conducting the periodic reviews as provided for in Section 6.7 above, The ABC Charity of Northern California may, but need not, use outside advisors unless otherwise required by law. If outside experts are used, their use shall not relieve the Board of its responsibility for ensuring periodic reviews are conducted.

8. OTHER PROVISIONS

8.1. Endorsement of Documents; Contracts. Subject to the provisions of applicable law, any note, mortgage, evidence of indebtedness, contract, conveyance, or other instrument in writing and any assignment or endorsement thereof executed or entered into between the Corporation and any other person, when signed by any one of the Chair of the Board, the President, or any Vice President and by any one of the Secretary or Treasurer of the Corporation shall be valid and binding on the Corporation in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the same. Any such instruments may be signed by any other person or persons, and in the manner, time to time determined by the Board. Unless so authorized by the Board, no officer, agent, or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or amount.

8.2. Construction and Definitions. Unless the context otherwise requires, the general provisions, rules of construction, and definitions contained in the General Provisions of

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the California Nonprofit Corporation Law and in the California Nonprofit Public Benefit Corporation Law shall govern the construction of these Bylaws.

- 8.3. Document Retention.** The Corporation shall retain records for the period of their immediate or current use, unless longer retention is necessary for historical reference or to comply with contractual or legal requirements. Records and documents outlined in this policy includes paper, electronic files (including e-mail) and voicemail records regardless of where the document is stored, including network servers, desktop or laptop computers and handheld computers and other wireless devices with text messaging capabilities. In accordance with 18 U.S.C. Section 1519 and the Sarbanes Oxley Act, the Corporation shall not knowingly destroy a document with the intent to obstruct or influence an "investigation or proper administration of any matter within the jurisdiction of any department agency of the United States . . . or in relation to or contemplation of such matter or case." If an official investigation is underway or even suspected, document purging must stop in order to avoid criminal obstruction.
- 8.4. Joint Ventures.** "Joint Venture" is defined as any arrangement, including contractual or more formal arrangements undertaken through a limited liability company, partnership, or other entity, through which The ABC Charity of Northern California and another entity jointly undertake any activity or business venture, or otherwise agree to joint ownership of any asset. A Joint Venture may include both taxable and tax-exempt activities.
- a. Approval and Management of Joint Activities.** Before making any decision to participate in a Joint Venture, the Corporation will ensure that the Joint Venture furthers the Corporation's exempt purposes and will negotiate at arm's length contractual and other terms of participation that safeguard the Corporation's exemption from federal income tax. Such terms shall be in writing in the operating agreement of the Joint Venture and shall include the following minimum requirements:
- (i) With respect to any whole joint venture (that is, a joint venture in which the Corporation contributes substantially *all* of its assets to the enterprise), the Corporation shall control the Joint Venture through fifty-one percent (51%) or more of the voting rights and/or veto power;
 - (ii) With respect to any ancillary joint venture (that is, a joint venture to which a portion of the Corporation's resources are contributed), the Corporation would, at a minimum, maintain sole control over the tax-exempt aspects of the Joint Venture and would have voting and ownership interests in the Joint Venture that are consistent with the Corporation's capital contributions;
 - (iii) A requirement that any subsequent contract with the Corporation's partner in the Joint Venture be negotiated at arm's length and for fair market value;
 - (iv) A requirement that the Joint Venture give priority to the Corporation tax-exempt purposes over maximization of profit for the participants of the Joint Venture; and
 - (v) A prohibition on activities that would jeopardize tax-exempt status.

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- 8.5. Travel.** The following policies apply to first-class or charter travel involving an employee of the Corporation:
- a. Premium-class or charter travel must be approved by someone at the same level or higher authority of the Corporation.
 - b. Employees with physical impairments or special needs must submit annual certifications unless the employee has permanent impairments, which can then be submitted once.
- 8.6. Companion Travel.** Reimbursements of travel expenses for a spouse or dependent will be paid only if the travel expense qualifies as nontaxable working condition fringe benefits under IRS Regulations:
- a. The travel of the spouse or dependent is for a bona fide business purpose.
 - b. The employee substantiates the time, place, amount, and business purpose of the travel under an accountable expense reimbursement plan.
 - c. The following criteria will be evaluated to determine whether a bona fide business purpose exists:
 - (i) The companion's function must be necessary; *i.e.*, result in desired business benefits to the Corporation.
 - (ii) The companion's contributions to the Corporation must be those which cannot efficiently be performed (or performed at all) by the employee alone.
 - (iii) The companion's services must augment the employee's purpose for the trip.
 - (iv) The benefit to the Corporation's business must be substantial.
 - d. If there is a bona fide business purpose for the travel, the following documentation of the companion's activities must be provided:
 - (i) Document the purpose for companion attendance by having written requirements for the spouse such as functions which must be attended (Corporate functions in addition to social functions would be helpful), roles which must be served during the meetings, and actively put these requirements into practice.
 - (ii) Document the companion's business role and mandatory presence in positions descriptions (a sample position description is on the following page) and meeting minutes.
 - (iii) Document the purpose for companion's attendance by having written requirements for the companion such as functions which must be attended (functions in addition to social functions would be helpful), roles which must be served during the meetings, and actively put these requirements into practice.
 - e. Reimbursements of companion expenses are generally considered taxable income unless the business purpose of the companion's travel has been established.

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- 8.7. Tax Indemnification and Gross-Up Payments.** Tax indemnification and gross-up payments refer to the Corporation's payment or reimbursement of any tax obligations for an employee. When these compensation arrangements are provided to executives of the Corporation, they should generally be documented and approved as part of the compensation package.
- 8.8. Discretionary Spending Accounts.** A discretionary spending account generally refers to an account or sum of money under the control of an employee with respect to which he or she is not accountable to the Corporation under an accountable plan, whether or not actually used for any personal expenses. Discretionary spending accounts can be subject to abuse because of the lack of accountability that is sometimes present. When used, it is important that the use of these accounts be limited to specific individuals and for specified amounts.
- 8.9. Housing Allowance.** A housing allowance is any payment for, or provision of, housing by the Corporation for personal use by an employee. To qualify for special tax treatment, the housing allowance must be approved by the Board.
- 8.10. Whistleblower.** If any employee reasonably believes that some policy, practice, or activity of the Corporation is in violation of law, a written complaint must be filed by that employee with the Chair of the Board. It is the intent of the Corporation to adhere to all laws and regulations that apply to the Corporation and the underlying purpose of this policy is to support the Corporation's goal of legal compliance with Labor Code §1102.5 and any other statute or regulation applicable to whistleblower protection. The support of all employees is necessary to achieving compliance with various laws and regulations. An employee is protected from retaliation only if the employee brings the alleged unlawful activity, policy, or practice to the attention of the Corporation and provides the Corporation with a reasonable opportunity to investigate and correct the alleged unlawful activity. The protection described below is only available to employees that comply with this requirement.

The Corporation will not retaliate against an employee who in good faith, has made a protest or raised a complaint against some practice of the Corporation, or of another individual or entity with whom the Corporation has a business relationship, on the basis of a reasonable belief that the practice is in violation of law, or a clear mandate of public policy.

The Corporation will not retaliate against employees who disclose or threaten to disclose to a supervisor or a public body, any activity, policy, or practice of the Corporation that the employee reasonably believes is in violation of a law, or a rule, or regulation mandated pursuant to law or is in violation of a clear mandate or public policy concerning the health, safety, welfare, or protection of the environment.

- 8.11. Form 990 Review and Approval.** It is the responsibility of the Treasurer to prepare and approve the Corporation's federal and state tax returns and related filings, and to ensure their timely filing. The Treasurer shall provide a draft of the Corporation's annual Form 990 federal tax return to each member of the Board of Directors, by email, with at least five days' opportunity to comment or ask questions, prior to filing the return.

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8.12. Disclosure of Documents.

- a. It is the Corporation's policy to fully comply with the Federal (and any state) public disclosure requirements, and to make such additional disclosures as may be useful to foster constructive public comment and donor diligence. To this end, the Board shall ensure that the following documents are publicly available, together with such other documents as the Board may deem appropriate:
 - (i) Forms 990, 990-T, 1023 and 5227.
 - (ii) The Corporation's IRS determination letter(s).
 - (iii) The Corporation's articles of incorporation.
- b. The Corporation shall honor the public inspection and copying requirements prescribed by IRS regulations, including: Provide copies to individuals who request them, immediately in the case of in-person requests, and within 30 days in the case of written requests. The Corporation may charge a reasonable copying fee plus actual postage, if any.
- c. The Board shall also, from time to time, assess the costs and benefits of different vehicles for making such documents publicly available, for example, on the Corporation's website or through third party websites.

8.13. Amendments. These Bylaws may be amended or repealed by approval by the majority approval of the Board.

9. INDEMNIFICATION

9.1. Definitions. The following definitions apply for the purposes of this Section 9:

- a. "agent" means any person who is or was a director, officer, employee, or other agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, or was a director, officer, employee, or agent of a foreign or domestic corporation which was a predecessor corporation of the Corporation or of another enterprise at the request of that predecessor corporation;
- b. "proceeding" means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative; and
- c. "expenses" includes without limitation attorneys' fees and any expenses of establishing a right to indemnification under Paragraph 9.4 or 9.5.b.

9.2. Indemnification in Actions by Third Parties. The Corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the Corporation to procure a judgment in its favor, an action brought under Section 5233 of the California Nonprofit Public Benefit Corporation Law, or an action brought by the Attorney General or a person granted relator status by the Attorney General for any breach of duty relating to assets held in charitable trust), by reason of the fact that that person is or was an agent of the Corporation, against expenses, judgments, fines, settlements, and other amounts

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actually and reasonably incurred in connection with that proceeding if that person acted in good faith and in a manner that person reasonably believed to be in the best interests of the Corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of that person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the Corporation or that the person had reasonable cause to believe that the person's conduct was unlawful.

9.3. Indemnification in Actions by or in the Right of the Corporation. The Corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action by or in the right of the Corporation, or brought under Section 5233 of the California Nonprofit Public Benefit Corporation Law, or brought by the Attorney General or a person granted relator status by the Attorney General for breach of duty relating to assets held in charitable trust, to procure a judgment in its favor by reason of the fact that the person is or was an agent of the Corporation, against expenses actually and reasonably incurred by that person in connection with the defense or settlement of that action if the person acted in good faith, in a manner such person believed to be in the best interests of the Corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. No indemnification shall be made under this Paragraph 9.3:

- a. In respect of any claim, issue, or matter as to which that person shall have been adjudged to be liable to the Corporation in the performance of that person's duty to the Corporation, unless and only to the extent that the court in which the proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for the expenses which the court shall determine;
- b. Of amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval; or
- c. Of expenses incurred in defending a threatened or pending action which is settled or otherwise disposed of without court approval, unless it is settled with the approval of the Attorney General.

9.4. Indemnification Against Expenses. To the extent that an agent of the Corporation has been successful on the merits in defense of any proceeding referred to in Paragraph 9.2 or 9.3 of this Section 9 or in defense of any claim, issue, or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

9.5. Required Determinations. Except as provided in Paragraph 9.4, any indemnification under this Section 9 shall be made by the Corporation only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in Paragraph 9.2 or 9.3 of this Section 9, by:

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- a. A majority vote of a quorum consisting of directors who are not parties to the proceeding; or
- b. The court in which the proceeding is or was pending upon application made by the Corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not the application by the agent, attorney, or other person is opposed by the Corporation.

9.6. Advance of Expenses. Expenses incurred in defending any proceeding may be advanced by the Corporation prior to the final disposition of the proceeding upon receipt of an undertaking by or on behalf of the agent to repay that amount unless it shall be determined ultimately that the agent is entitled to be indemnified as authorized in this Section 9.

9.7. Other Indemnification. No provision made by the Corporation to indemnify its directors or officers for the defense of any proceeding, whether contained in the Articles, Bylaws, a resolution of members or directors, an agreement, or otherwise, shall be valid unless consistent with this Section 9. Nothing contained in this Section 9 shall affect any right to indemnification to which persons other than such directors and officers may be entitled by contract or otherwise.

9.8. Forms of Indemnification Not Permitted. No indemnification or advance shall be made under this Section 9, except as provided in Paragraph 9.4 or 9.5.b, in any circumstances in which it appears:

- a. That it would be inconsistent with a provision of the Articles, these Bylaws, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or
- b. That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

9.9. Insurance. The Corporation shall have power to purchase and maintain insurance on behalf of any agent of the Corporation against any liability asserted against or incurred by the agent in that capacity or arising out of the agent's status as such whether or not the Corporation would have the power to indemnify the agent against liability under the provisions of this Section 9, provided, however, that the Corporation shall have no power to purchase and maintain such insurance to indemnify any agent of the Corporation for a violation of Section 5233 of the California Nonprofit Public Benefit Corporation Law.

9.10. Nonapplicability to Fiduciaries of Employee Benefit Plans. This Section 9 does not apply to any proceeding against any trustee, investment manager, or other fiduciary of an employee benefit plan in such person's capacity as such, even though that person may also be an agent of the Corporation as defined in Paragraph 9.1. The Corporation shall have power to indemnify that trustee, investment manager, or other fiduciary to the extent permitted by Section 207(f) of the California General Corporation Law.

Sample Bylaws Including 990 Policies

SCHLEY LOOK GUTHRIE & LOCKER LLP

CERTIFICATION BY SECRETARY

I, the undersigned Secretary of The ABC Charity of Northern California, certify that the foregoing Bylaws were approved by majority vote of the Board of Directors at a meeting duly called and noticed, at which a quorum was present, on _____, 2009.

Date:

Secretary

Sample Bylaws Including 990 Policies

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Exhibit A

Type of Document	Retention Period
Accounts receivable and payable ledgers	7 years and schedules
Annual audited financial statements, audit reports, general ledgers, internal audit reports, trial balance journals	Permanently
Articles of Incorporation, Charter, Bylaws, minutes and other incorporation records	Permanently
Bank Reconciliation	7 years
Bank Statements, deposit records, electronic fund transfer documents, and cancelled checks	7 years
Chart of Accounts	Permanently
Personnel files (terminated employees)	7 years after termination
Contracts, mortgages, notes and leases (still in effect)	Permanently
Contracts, mortgages, notes and leases (expired)	7 years
Correspondence (general)	4 years
Correspondence (legal and important matters)	Permanently
Correspondence (with customers and vendors)	4 years
Depreciation schedules	Permanently
Employment applications	3 years from making the record or taking the personnel action
Financial statements	7 years

Sample Bylaws Including 990 Policies

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Garnishments	7 years
Insurance policies, records, current accident reports, claims (still in effect)	Permanently
Insurance policies, records, accident reports, claims (expired)	7 years
Inventory records	7 years
Invoices (to customers, from vendors)	7 years
Loan documents and notes	Permanently
Personnel files (employee demographic information and compensation records)	7 years
Personnel files (I-9's)	7 years after date of hire or 1 year after termination
Personnel files (payroll records and summaries including records related to employee's leave)	7 years
Retirement and pension records including Summary Plan Descriptions (ERISA)	Permanently
Tax Returns and worksheets	Permanently
Timesheets	7 years
Trademark registrations and copyrights	Permanently
Workers Compensation documentation	10 years after 1st closure