

CODE OF CONDUCT FOR

THE MUSEUM OF MODERN ART and ITS AFFILIATED ORGANIZATIONS

Members of the Board of Trustees, Officers,
Committee Members and Key Persons

THE MUSEUM OF MODERN ART CODE OF CONDUCT

I. GENERAL STATEMENT

As the preeminent preserver and presenter of modern and contemporary art and design, The Museum of Modern Art (the "Museum") is always in the public eye. The Museum is an educational resource deemed worthy of tax-exempt status. Its donors know that their financial support will be used in furtherance of the Museum's stated mission; its Trustees, officers, staff and volunteers believe that their efforts on behalf of the Museum are well spent. The issue of public trust demands that in all activities, Museum Trustees, Officers, Committee Members and Key Persons (collectively, hereinafter referred to as "**Covered Individuals**") act with integrity and in accordance the requirements mandated by law, the most stringent ethical principles and the highest standards of objectivity. The Museum is committed to integrity as the fundamental guiding principle for Covered Individuals and others who act on its behalf. The Museum has prepared this Code of Conduct to reaffirm this commitment.

The guidelines contained in this Code are designed to assist you, as Covered Individuals, in making the right choices when confronted with difficult situations. In such instances, this Code requires that you not rely *solely* on your own judgment but instead discuss the matter in full, if you are a Key Person (other than the Director), with the Director or in appropriate circumstances, with the Office of the General Counsel (unless you are the General Counsel); or in the case of the Director, a Trustee, Officer or Committee Member, with the Chair of the Audit Committee, or with the General Counsel. Full and timely disclosure of the facts in such instances is essential. It shall, of course, be the responsibility of all those having supervisory and advisory authority to assure consistent adherence to this Code and any procedures developed pursuant to it, in letter and spirit, and, when appropriate, to obtain legal or other advice through normal channels.

The Code imposes requirements that are often more exacting than those mandated by law, reflecting the Museum's goal of conducting itself with the highest level of integrity. The willingness of each of us to raise ethical and legal concerns is essential. Ultimately, the responsibility for ethical behavior rests with each of us in the exercise of his or her independent judgment.

The Museum also expects Covered Individuals to recognize and avoid activities and relationships that involve or might appear to involve conflicts of interest, and behavior that may cause embarrassment to the Museum or compromise its integrity.

The following principles are intended to guide Covered Individuals in recognizing these situations:

- The Museum and its Covered Individuals will abide by the letter and spirit of all applicable laws and regulations and will act in such a manner that the full disclosure of all facts related to any activity will reflect favorably upon the Museum.
- The Museum and its Covered Individuals will adhere to the highest ethical standards of conduct in all activities and will act in a manner that enhances the Museum's standing as a vigorous and ethical contributor within the community.
- The Museum will deal fairly and honestly with those who are affected by its actions and treat them as we would expect them to treat us if the situation were reversed.
- The Museum will undertake only those activities that will withstand public scrutiny and not pursue any course of action that involves a violation of the law or these principles.
- The Museum will promote relationships based on mutual trust and respect and provide an environment in which individuals may question a practice without fear of adverse consequences.
- Each of us will abide by the Museum's Conflict of Interest Policy (set forth in Section II of this Code), will disclose any potential conflict of interest we may have regarding our responsibilities to the Museum and will remove the conflict as required.

We expect outside colleagues, e.g., vendors, consultants and others whose actions could be attributed to the Museum, to adhere to the same standards in their dealings with us and with others on our behalf.

II. DEFINITIONS

- a) The term “**Audit Committee**” means the Committee of the Board (as defined below) to which the Board has delegated responsibility for the Museum’s audit function and review and implementation of the Code of Conduct.
- b) The term “**Authorized Committee**” means any one of the following: (i) the Board (as defined below), (ii) the Audit Committee, (iii) the Executive Committee or (iv) a Committee of the Board to which the Board has delegated authority to address a Covered Arrangement that is within such Committee’s sphere of competence (e.g. investments).
- c) The term “**Board**” means the Museum’s Board of Trustees.
- d) The term “**Committee of the Board**” means a committee whose voting membership consists of at least three individuals, all of whom are members of the Board.

- e) The term “**Covered Arrangement**” means each proposed transaction, agreement or other arrangement (including any compensation arrangement) in which:
1. (i) one or more Related Parties would have a financial interest and (ii) the Museum would be a participant (including any Related Party Transaction, as defined below); or
 2. there could be an actual or perceived conflict of interest for some other reason, including any transaction, agreement or other arrangement in which the interest of a Related Party could be seen as competing with the interests of the Museum.
- f) The term “**Key Person**” means any person, other than a Trustee or officer of the Museum, whether or not an employee, who: (i) has responsibilities, or exercises powers or influence over the Museum as a whole, similar to the responsibilities, powers or influence of Trustees and officers; (ii) manages the Museum, or a segment of it that represents a substantial portion of the activities, assets, income or expenses of the Museum; or (iii) alone or with others controls or determines a substantial portion of the capital expenditures or operating budget of the Museum. Key Persons include, but are not limited to, Director, Associate Director, Chief Operating Officer, Chief Financial Officer, Chief Investment Officer, Director of Investments, General Counsel, all Senior Deputy Directors, all Chief Curators, General Manager – Retail, Chief Technology Officer, Director of Facilities, Security, Director of Human Resources and Publisher.
- g) The term “**Related Parties**” means:
1. All Covered Individuals.
 2. the following relatives of each Covered Individual:
 - (i) his or her ancestors
 - (ii) his or her siblings and half-siblings
 - (iii) the spouses of his or her siblings and half-siblings
 - (iv) his or her spouse or domestic partner,
 - (v) his or her children, grandchildren, and great-grandchildren
 - (vi) the spouse of each of his or her children, grandchildren and great grandchildren.
 3. any entity or trust of which any Covered Individual or relative serves as a director, trustee, officer or employee.
 4. any entity or trust in which any one or more Covered Individuals or their relatives have a 35% or greater ownership or beneficial interest or, in the case of a partnership or professional corporation a direct or indirect ownership interest in excess of 5%.
 5. any other entity or trust in which one or more Covered Individuals or their relatives have a material financial interest.

- h) The term “**Related Party Transaction**” means any related party transaction with respect to the Museum within the meaning of New York law.¹

III. CONFLICT OF INTEREST POLICY; COMMITMENT TO THE MUSEUM

Conflicts of Interest

The Museum of Modern Art (the “Museum”) is a not-for-profit corporation formed under the education laws of the State of New York. Covered Individuals have a duty to serve the purposes to which the Museum is dedicated and to conduct the affairs of the Museum in a manner consistent with such purposes and not to advance their personal interests. This Conflict of Interest Policy, along with other Museum policies such as, but not limited to those referred to throughout this Code of Conduct, is intended to ensure that Covered Individuals act in the Museum’s best interest and comply with applicable legal requirements. This Conflict of Interest Policy is designed to promote the identification, disclosure, evaluation and disposition of any real, potential or apparent conflicts of interest that might, in fact or in appearance, call into question a Covered Individual’s duty of undivided loyalty to the Museum.

Definitions for this Conflict of Interest Policy are included in Articles I and II, above.

1. Circumstances that Constitute a Conflict of Interest:

All **Covered Arrangements** (as defined in Article II, above) are circumstances that constitute a perceived, potential or actual conflict of interest and as such are subject to the terms of this Conflict of Interest Policy.

2. Procedures for Disclosing, Addressing and Documenting Covered Arrangements:

Disclosure Statements, substantially in the form attached to this Policy, must be completed by all Covered Individuals on an annual basis. These, and all reports of actual or potential conflicts of interest, will be reviewed and evaluated in the case of Trustees, Officers and Committee Members, initially by the Authorized Committee and the Office of the General Counsel, and in the case of Key Persons, initially by the Director of Human Resources and the Office of the General Counsel, except where a conflict may involve the General Counsel, in which case, by the Director or the Director of Human Resources. **Conflicts or potential conflicts identified in accordance with this Code will be handled as follows:**

¹ Pursuant to the New York Non-Profit Revitalization Act, as amended, a transaction will not be considered a Related Party Transaction if: (i) the transaction or the related party’s financial interest in the transaction is *de minimis*; (ii) the transaction would not customarily be reviewed by the Board or boards of similar organizations in the ordinary course of business and is available to others on the same or similar terms; or (iii) the transaction constitutes a benefit provided to a related party solely as a member of a class of beneficiaries served by the Museum as part of the accomplishment of its mission, which benefit is available to all similarly situated members of the same class on the same terms.

Key Persons. The Director of Human Resources shall forward to the General Counsel the name and the conflict or potential conflict identified for each Key Person accompanied by a copy of the completed Disclosure Statement. When necessary, an investigation shall be conducted to determine the facts and circumstances surrounding the conflict or alleged conflict and for recommendation of action warranted, if any. All Key Persons shall have an obligation to answer inquiries in this regard. Such investigations shall be kept confidential, to the extent required by law and consistent with the Museum's interests and its legal obligations. The Museum prohibits intimidation harassment, discrimination or other retaliation, or adverse employment consequences against a Key Person who, in good faith, provides assistance to an investigation hereunder or with respect to actual or possible violations of law, the Code, the Conflict of Interest Policy or other Museum policies including, but not limited to, non-discrimination, anti-harassment, political participation, gifts and the like.

Recommendations may include but are not limited to the following: that no action be taken; that the individual identified not be involved in decision making situations relative to those companies or individual(s) listed by the employee; that the individual be requested to resolve the conflict to the satisfaction of the Museum; that disciplinary action be taken, etc. The Director of Human Resources shall notify the supervisors of those Key Persons with identified conflicts and the action to be taken, if any.

Other Covered Individuals. The General Counsel shall forward to the Board of Trustees or Authorized Committee the name, the conflict or potential conflict identified for each Covered Individual other than a Key Person and a proposed recommendation for action. Such recommendation may include, but is not limited to, the following: that no action be taken; that any conflict or potential conflict involving such Covered Individual be disclosed to the Board; that the involved Covered Individual be excused from voting on the pertinent matter; that the individual be requested to resolve the conflict; that the Covered Individual be requested to resign from his or position,, etc. Please see the Conflict of Interest Policy contained herein for a further discussion of Related Party Transactions and related procedures.

The Authorized Committee shall make a recommendation to the Chairman of the Board for a decision by the Board at its next regularly scheduled meeting as to the action, if any, to be taken by the Board.

3. **Related Party Transactions**

- a. *Procedures Applicable to the Individual:* when a Covered Individual has a direct or indirect interest in a Covered Arrangement, he or she:
 - i. Must immediately disclose in writing the existence and circumstances of the Covered Arrangement (including the material facts concerning his or interest to an **Authorized Committee** (as that term is defined herein);
 - ii. Must refrain from attempting to influence the deliberations or voting on the Covered Arrangement;
 - iii. May not participate in or attend the deliberations or vote on the

- Covered Arrangement; and
- iv. May present background information or answer questions on the Covered Arrangement at the request of the Authorized Committee..

- b. *Procedures Applicable to the Museum:* Once an Authorized Committee becomes aware of a Covered Arrangement, the following procedures apply prior to approval of such Covered Arrangement:
 - i. The Authorized Committee must confirm that procedures outlined in 3.a. above have been and are being taken.
 - ii. Prior to approving a Covered Arrangement, the Authorized Committee must determine that the Covered Arrangement is fair, reasonable and in the Museum's best interest and in so doing, must obtain and rely on comparable market data, to the extent available, in making the determination that the Covered Arrangement is fair, reasonable and in the Museum's best interest.
 - iii. The Authorized Committee must consider alternative transactions, to the extent available, if the Covered Arrangement is a Related Party Transaction in which a **Related Party** (as that term is defined herein) has a "substantial financial interest" within the meaning of New York Law.
 - iv. The Authorized Committee must determine whether the Covered Arrangement is material to the financial, reputational or other interests of the Museum, in which event consideration must be given to alternative transactions, agreements or arrangements, to the extent available. If an Authorized Committee other than the Board makes a determination that the Covered Arrangement is material, it (A) must promptly notify the Board of this determination and (B) may condition its approval, if any, of the Covered Arrangement on the further review, approval, endorsement or other input of the Board.
 - v. All determinations and approvals with respect to a Covered Arrangement require the affirmative vote of not less than a majority of the members of the Authorized Committee present at a meeting of the Authorized Committee (provided a quorum is present and no greater portion is required by applicable law or the Museum's Certificate of Incorporation or Bylaws). Interested Trustees may be counted solely for determining the presence of a quorum. Notwithstanding the foregoing, the salaries of officers may be set only by the affirmative vote of a majority of the entire Board.
 - vi. All disclosures and recusals with respect to a Covered Arrangement

together with the basis for all determinations and approvals of the Authorized Committee must be contemporaneously documented in writing (including in the minutes of any meeting at which the Covered Arrangement was discussed and voted on). This documentation must include an account of the consideration of comparable market data and alternative transactions, agreements or arrangements, to the extent considered or available.

- vii. If a Covered Arrangement is before an Authorized Committee other than the Executive Committee or the Audit Committee, the existence of the matter and its disposition (including compliance with the requirements of this Conflict of Interest Policy) must be promptly disclosed to the Executive Committee or the Audit Committee.
- viii. For Covered Arrangements entered into prior to the adoption of this Policy or otherwise without following the procedures set forth in 3.b.i-vii above, an Authorized Committee may ratify such Covered Arrangements if it subsequently undertakes such procedures, provided that the nature of the initial violation of such procedures and the basis for the Authorized Committee's subsequent ratification of such Covered Arrangements are documented in writing.

4. **Disclosure Statement**

Prior to the initial election, appointment or hiring of a Covered Individual, and annually thereafter, such individual must complete, sign and submit to the Secretary of the Museum a written Disclosure Statement identifying to the best of his or her knowledge:

- (a) Any entity or trust of which such individual is an officer, director, trustee, member, owner (either as a sole proprietor or a partner) or employee and with which the Museum has a relationship;
- (b) Any transaction in which the Museum is a participant and in which the Covered Individual or a Related Party with respect to that individual might have a conflicting interest; and
- (c) Any other interests that could give rise to conflicts of interest.

Each Covered Individual must update his or her Disclosure Statement as necessary to reflect changes during the course of the year.

Completed Disclosure Statements will be available for inspection by any

member of the Board, a designated compliance officer of the Museum (if any) and review by the Museum's General Counsel. The Secretary of the Museum will periodically update the Board concerning compliance with the Disclosure Statement requirements of this Policy.

5. Adoption; Implementation and Compliance

The Board may make changes to this Conflict of Interest Policy from time to time, as it deems appropriate. The Board will oversee the implementation of, and compliance with, this Policy.

6. Administration

A copy of this Conflict of Interest Policy must be furnished to each Covered Individual promptly upon its adoption. In addition, each new Covered Individual must be furnished with a copy of this Conflict of Interest Policy prior to the commencement of his or her duties. Each Covered Individual must acknowledge, not less than annually, that he or she has read and is in compliance with this Conflict of Interest Policy, and complete the attached Disclosure Statement.

Outside Activities

While the Museum requires Key Persons to devote their working day to performing their job responsibilities, it recognizes that it may be in its best interests for them to participate in certain outside activities. However, it is the Museum's policy that, during normal working hours, such Key Persons shall not engage in "outside employment," except for scholarly activity as outlined below. "Outside employment" is an activity, including self-employment and paid consulting activities, which is similar or related to the work a Key Person performs for the Museum.

Key Persons are encouraged to pursue "scholarly activity" independent of Museum duties, provided that such activity is approved in advance by the Director and does not interfere with his or her performing Museum responsibilities. "Scholarly activity" includes teaching or lecturing, serving on committees or juries for art exhibitions or competitions, writing books or articles other than those requested through the Museum with or without remuneration. Teaching one course at an institution of higher learning is encouraged, provided that the commitment is not beyond a specific course in a semester. Should a Key Person undertake a project that involves writing on a subject within the scope of employment, the text must be offered to the Museum first, which will have the option to exercise its publication rights.

A Key Person may, with approval of the Director, engage in outside employment provided that it is undertaken during off-duty hours and in accordance with the following

guidelines:

- ❑ Outside employment must not interfere with a Key Person's ability to perform assigned Museum work nor may it reflect adversely on the Museum's reputation.
- ❑ Key Persons are expected to exercise reasonable judgment regarding the appropriateness and/or propriety of outside employment. Outside employment should not be accepted if it creates a conflict of interest or the appearance of a conflict of interest. In particular, conflicts may be presented by employment offered by art dealers, auction houses, collectors seeking to catalogue their collections or otherwise seeking professional advice, museums, publishers, manufacturers or consultants to such entities. Prior to taking on outside work, Key Persons should carefully contemplate the potential for conflicts of interest between such work and service to the Museum. These issues must be discussed with and approved by the Director before undertaking the outside work.
- ❑ Key Persons should not undertake outside work or use the Museum's name in connection with such work if such action might reasonably be construed by the public as an endorsement or action of any kind by the Museum. The Museum does not permit its name to be used in advertisements or endorsements of commercial products, equipment or services except with the advance written approval of the Director of Communications.
- ❑ The relationship between Trustees and Key Persons is naturally close and mutually beneficial to the Museum. Nonetheless, Trustees should not use their position to obtain unreasonable or excessive services or expertise from Key Persons of the Museum. Trustees should not retain Key Persons to perform personal services, and Key Persons shall not provide services to Trustees for which they receive compensation, unless approved in writing by the Director of the Museum.
- ❑ Outside work conducted on the Museum's premises shall be of a limited and occasional nature and is not permitted during work hours, and requires advanced approval of the Director. There should be neither the fact nor the perception that any Key Person is conducting a separate business for which he or she is using the Museum's facilities or equipment. The use of Museum equipment and facilities by independent contractors for outside work is not permitted under any circumstances.
- ❑ The use of Museum materials (office supplies, office services, telephone, e-mail address postage, etc.) for outside work or personal use is not permitted. The Museum will not be responsible for any loss or damage that may occur while staff is engaged in outside work, either inside or outside of the Museum.
- ❑ The Museum encourages Key Persons to participate in the activities of voluntary

and professional organizations. However, Key Persons may not work or solicit for such organizations on Museum time nor may they use Museum materials, equipment, facilities, name or reputation for the benefit of such organizations, except with the prior written approval of the Director.

- Questions regarding outside work or activity, with or without remuneration, should be referred to the Director, who may consult with the Director of Human Resources and/or the General Counsel, as appropriate. Among the factors that will be considered in determining whether outside employment is appropriate are:
 - whether the outside activity would or does impinge on a Key Employee's performing his or her regular Museum duties;
 - whether the outside activity would or does serve the best interests of the Museum in its relationships with other institutions, potential donors or official agencies;
 - whether the outside activity would or does enhance a Key Person's professional standing and thus indirectly benefit the Museum;
 - whether the outside activity would or does represent a conflict of interest or appearance of conflict of interest or an unwarranted use of or risk to the Museum's name and reputation.

Approval of any outside work or activity is effective only until revoked and may be revoked by the Museum at any time. If a Key Person fails to secure and retain approval, he or she may be subject to disciplinary action, up to and including discharge.

Outside Associations and Activities

It is not the intent of this Code to discourage participation by Key Persons in civic, welfare, political (see Section IV re: political participation) and similar activities. However, Key Persons may not work or solicit for such organizations on Museum time nor may they use Museum materials, equipment, facilities, name or reputation for the benefit of such organizations, except with the prior written approval of the Director.

Endorsement of products or services is prohibited unless authorized in writing by the Director of the Museum.

Personal Collecting

The acquiring, collecting and owning of objects can enhance professional knowledge and judgment. However, the acquisition, maintenance and management of a personal collection by a Covered Individual can create an ethical question. Extreme discretion is required whenever a Covered Individual collects objects similar to those collected by the Museum. No Covered Individual or Related Party may knowingly compete, directly or indirectly, with the Museum for the purchase of works of art that are, or may be, of interest to the Museum.

Similarly, no Covered Individual or Related Party may knowingly purchase deaccessioned works of art directly or indirectly from the Museum or at auction if consigned by the Museum. No Covered Individual or Related Party may, directly or indirectly, sell works of art to the Museum except at a price substantially below fair market value, as determined by an independent appraisal, and upon terms approved by the appropriate Acquisition Committee. Notwithstanding the foregoing, in rare instances, the Museum may purchase a work of art owned by a Covered Individual or Related Party indirectly at an auction, upon the recommendation of the Director, after full disclosure of the facts and circumstances surrounding such sale and approval of the Executive Committee and/or the Board of Trustees without the presence and vote of the Covered Individual.

Gifts

Conflicts of interest may arise in the areas of gifts and entertainment. Giving or accepting gifts and entertainment can sometimes be construed as an attempt to unduly influence a relationship. All gifts to the Museum, including gifts of any kind to curatorial departments, must be processed through the Senior Deputy Director of External Affairs, and, if relevant, in accordance with the Museum's Collections Management Policy. No personal gifts should be offered or received where the gift could be viewed as intended to influence a Covered Individual in the exercise of proper business or professional judgment. In order to avoid conflicts of interest and the appearance of impropriety, Covered Individuals must obtain the consent of the Director for Key Persons and the Board or Authorized Committee for other Covered Individuals, before accepting gifts of any kind from individuals or organizations doing business or wishing to do business with the Museum. This includes, but is not limited to, Trustees, artists, dealers, auction houses, press, and suppliers of goods or services to the Museum. Key Persons may not accept gifts valued, individually or in combination with other gifts from the same source, at more than \$100 in any calendar year. Works of art or other materials left with the Museum for exhibition or study may not be retained by Key Persons without specific approval from the Director. Gifts of money are never permissible.

Attending occasional lunch or dinner meetings hosted by others may be necessary when conducting Museum business. However, Key Persons are reminded that to exercise extreme discretion in accepting invitations to dinners, lunches or other forms of entertainment offered by individuals or organizations doing or wishing to do business with the Museum. Your judgment should tell you when an invitation to such a meeting or event is improper and should be refused to prevent embarrassment and to avoid what may be an unintentional violation of this policy or the law.

As a Key Person, you may have the opportunity to work closely with artists in planning exhibitions and publications or through other Museum-related activities. While an artist may wish to acknowledge a Key Person's efforts through a gift of artwork to the employee, these gifts present another area of potential conflict. In such situations, the Key Person must promptly disclose the gift to the Director, who will determine whether the work in question is of nominal value and may be accepted or if it warrants presentation to the relevant Museum acquisition committee.

Federal and state laws restrict the ability to give a gratuity to government employees, including politicians. These laws specifically prohibit giving a gratuity to a government employee in connection with a business transaction. The giving of a gratuity is not permitted even if done without the intent to influence some official action.

IV. CONDUCTING THE MUSEUM'S BUSINESS

Proper Use of the Museum's Funds

The Museum's activities involve hundreds of financial transactions each day, requiring strict rules to guard against fraud or dishonesty and guidelines for addressing possible problems that may arise. All Key Persons should establish appropriate internal controls over all areas of their responsibility to ensure the safeguarding of the Museum's assets and the accuracy of financial and all other records and reports. Established accounting practices and procedures must be followed to assure the complete and accurate recording of all transactions. All employees, within their areas of responsibility, are expected to adhere to these established controls.

If, as a Key Person, you become aware of any improper use of the Museum's resources, you should report the matter immediately. To be certain the Museum's policies on proper use of resources are carried out, you are expected to observe the following longstanding accounting rules:

- Make outside payments only with a Museum draft, check or wire or through other properly documented sources. No payment on behalf of the Museum should be approved or made without adequate supporting documentation or with the intention or understanding that any part of the payment is to be used in any way other than as described in the supporting documents.
- Do not establish any undisclosed or unrecorded corporate account, fund or asset for any purpose.
- Get proper authorization before opening any new account, either on the Museum's books or with an outside agency, such as a bank.
- Do not use any account for a misleading purpose or to conceal the existence or use of any corporate resource.
- Record every payment to and every transaction with an outside party on the Museum's books promptly, accurately and through normal financial reporting channels.

If you are involved in or accountable for any such transaction, you are expected to make sure a prompt and accurate accounting is made.

You are also expected to select the Museum's business partners solely on their merits, in the best interest of the Museum, and without regard to non-business-related considerations. Further rules about Related Party transactions are included in the Conflict of Interest Policy contained in Article II.

If you detect or suspect that a Key Person, Trustee or agent of the Museum, or any person with whom the Museum deals, is behaving in a manner inconsistent with this Code including the Conflict of Interest Policy, any other Museum policy or the law, you should report it immediately in accordance with "The Museum of Modern Art Policy and Procedures for Complaints Concerning Violations of Museum Policies or of Ethical or Financial Misconduct" so that an appropriate investigation can be initiated.

If evidence of a violation of this Code is established, any involved Key Person is subject to discipline up to and including termination. Any such evidence will be reviewed by the Office of the General Counsel, working in collaboration with the Board (or an Authorized Committee), the Director of Human Resources and other applicable and appropriate Museum parties. When appropriate, the Museum will refer matters to the authorities for prosecution.

Fundraising

As a charity, the Museum relies heavily on contributions from donors to support its many activities. Covered Individuals are encouraged to support this fund raising effort but must coordinate all activities with the Senior Deputy Director of External Affairs. Monies or other items received on behalf of the Museum as gifts should be deposited immediately in Museum accounts.

Charitable contributions from vendors to the Museum may raise issues implicating federal and state laws, and may also present tax-related concerns. All such contributions should be reviewed by the Development Department and accepted on behalf of the Museum by the Senior Deputy Director for External Affairs. Care should be taken when soliciting or receiving such contributions that the donor not be led to believe, either directly or indirectly, that the contribution will affect the Museum's professional judgment regarding the goods or services it purchases, recommends or provides.

Tax

The Museum is exempt from taxation by the federal, state and local governments. In order to maintain this exemption, which is critical to the Museum's mission and continuing operations, the Museum must operate for the benefit of the public and must avoid violating the tax code by using its funds for the unjust enrichment of any individual or entity at the organization's expense. Violation of the tax law can give rise to criminal penalties as well. Questions on tax issues should be referred to the Office of the General Counsel.

Care must also be taken that the Museum's sales tax exemption is used only for legitimate Museum activities. Personal items must not be purchased through the Museum even if the Museum is reimbursed by the Covered Individual.

V. POLITICAL PARTICIPATION.

It is understood that Covered Individuals can and do participate in political campaigns in their individual capacities, on their own time and without any use of Museum resources. Covered Individuals must, however, take steps to ensure that their individual participation will not be attributed to the Museum or make use of Museum resources. The Museum does not endorse political candidates or participate in political campaign activities. No Covered Individual may participate in any political campaign on behalf of the Museum or engage in any other activity that would lead an outsider to believe that the Museum is supporting or opposing a candidate for public office. This prohibition covers activities such as making campaign contributions, organizing or encouraging the purchase of tickets to political fundraising events, using Museum facilities or resources for campaign-related activities, and publishing, making, or distributing statements for or against any candidate, where such activities are, or may appear to be, undertaken on behalf of the Museum.

Certain Museum activities are supported, in part, with funds received from the City of New York, New York State and/or the Federal Government. Certain elected officials are *Ex-Officio* members of the Museum's Board of Trustees. Nothing in this policy is intended to limit the Museum's ability through Covered Individuals to seek and accept governmental support, or prohibit elected officials from participating in the Museum's governance and activities. Any Covered Individual who has questions regarding this policy should consult the Office of the General Counsel.

It is important to distinguish between personal and organizational political activities. As a responsible citizen, the Museum occasionally will speak out on issues of importance to it. Senior management is responsible for developing the Museum's position on relevant legislative and regulatory issues. Unless you are specifically requested by the Museum to represent it before legislative or other governmental bodies, be sure you clearly label any personal communication with legislators as your own beliefs. If you are contacted by legislators or regulators regarding the Museum's position on public issues, you should refer them to the Senior Deputy Director of External Affairs.

Any Covered Individual who has questions should consult The Museum of Modern Art Policy on Political Activity, the Senior Deputy Director of External Affairs, the Office of Government and Community Relations or the Office of the General Counsel.

Lobbying

Certain Covered Individuals may periodically be called upon by the Museum to make contact with members of city, county, state or federal legislative bodies and other officials to set forth and advocate for the Museum's positions on certain issues. These persons are expected to abide by all applicable laws at all times. Any person who attempts to influence any legislative, executive or other governmental action, official or employee on behalf of the Museum may be required to register as a lobbyist and file certain reports concerning his or her activities. There are also registration and reporting requirements as well as explicit limitations on lobbying that apply to the Museum. In addition, some laws provide rules of conduct for lobbyists. With respect to lobbying, it is the Museum's policy that no gifts, meals or gratuities be given to government personnel without prior authorization from the Director's Office. To assure that these laws and policies are fully complied with, it is expected that no Covered Individual will engage in lobbying without authorization from the Director of the Museum.

The Museum also periodically engages lobbyists or lobbying firms to help promote its interests, and has established internal controls to assure that all activities comply with law. Written authorization must be obtained from the Director prior to engaging any lobbyist, outside legal counsel or consultant to lobby for or otherwise promote the Museum's interests on any legislative, regulatory or other governmental issue.

VI. MUSEUM INFORMATION

Ownership of Assets and Intellectual Property

The objects in the Museum's collections, their documentation and all additional documentation developed subsequent to or in connection with their acquisition or maintenance are the property of the Museum. Any and all materials or items developed, written, designed, drawn, painted, constructed or installed by Key Persons who are employees of the Museum while carrying out their responsibilities as employees of the Museum are the property of the Museum. Unless otherwise agreed in writing by both the relevant Key Person and the Director of the Museum, the Museum is the sole owner of any materials written, designed or produced by all employees in the scope of their employment by the Museum, or through the use of Museum equipment and/or assets, including all copyrights and other intellectual property rights in and to these materials.

Confidentiality of Museum Information

One of the Museum's most valuable assets is its body of confidential information. The widespread use of computer terminals and computer systems has caused information about the Museum's collections, donors, projects and similarly sensitive matters to be accessible to many employees. Failure to protect this information adequately can lead to the loss of highly confidential data that may place the Museum legally at risk. Because of this risk of harm to the Museum, no Covered Individual shall, without the written consent of the Museum during or subsequent to the

term of employment or service to the Museum as the case may be, use for his or her own benefit or disclose to others any confidential information obtained during the course of service to the Museum. Of course, these same principles apply to the safeguarding by other Covered Individuals of the Museum's confidential information.

Confidential information includes, but is not limited to, the Museum's methods, processes, techniques, computer software, equipment, servicemarks, copyrights, research data, marketing and sales information, personnel data, donor lists, member lists, non-public information about the collection, financial data, plans and all other know-how and trade secrets which are in the possession of the Museum and which have not been published or disclosed to the general public.

As a Covered Individual, you are responsible and accountable for the integrity and protection of the Museum's proprietary information and must take steps to protect information that has been entrusted to you. For example, you must not make inappropriate modifications of information or destroy or disclose information except as authorized. Documents containing sensitive data should be handled carefully by Key Persons during work hours and must be properly secured at the end of the business day. Particular attention must be paid to the security of data stored on the computer system. If you observe unknown individuals using terminals in your area, immediately report this to your supervisor.

Information Owned by Others

Like the Museum, other organizations and individuals have intellectual property they want to protect. Like the Museum, these other parties are sometimes willing to disclose their confidential information for a particular purpose. If you are on the receiving end of another party's confidential information, you must proceed with caution to prevent any accusations that you or the Museum misappropriated or misused the information.

To avoid the risk of you or the Museum being accused of misappropriating or misusing someone's confidential or restricted information, there are certain steps you should take before receiving such information. The receipt of confidential or restricted information, whether oral or in writing, must not take place until the terms of its use have been formally agreed to by the Museum and the other party in a written agreement approved by the Office of the General Counsel. Furthermore, unless otherwise delegated, establishing such an agreement for the receipt of confidential or restricted information of another party will require the prior written approval of the Director in the case of Key Persons or the Chair of an Authorized Committee Committee in the case of Trustees, Officers and Committee Members. Once another party's confidential or restricted information is properly in your hands, you must not use, copy, distribute or disclose that information unless you do so in accordance with the terms of the agreement.

In any case, do not take the status of information for granted. If you have information in your possession that you believe may be confidential to a third party or may have restrictions placed on its use, you should consult with the Office of the General Counsel.

VII. STAFF MANUAL

The Museum's Staff Manual addresses for Key Persons many of the issues addressed in the Code, as well as a number of other policies not directly addressed in the Code, but of equal importance. Familiarity with and adherence to the Staff Manual is a responsibility of each Key Employee. In the event of any conflict or inconsistency between the Staff Manual and the Code, the Code shall take precedence and be controlling.

VIII. COMPLIANCE WITH THE CODE

Questions Regarding the Code

The Office of the General Counsel, with the assistance of the Board or chair of an Authorized Committee, in the case of Trustees, Officers and Committee Members, and the Department of Human Resources for Key Persons, is responsible for implementation of the Code and the Conflict of Interest Policy that is incorporated within the Code. A Key Employee who has a question regarding the applicability or interpretation of the Code should direct the question to the Department of Human Resources or the General Counsel. Correspondence relating to the Code should be addressed to either of these individuals and marked "CONFIDENTIAL." Trustees with questions concerning the Code should raise them with the General Counsel.

Reporting of Violations

As part of its commitment to ethical and legal conduct, the Museum expects Covered Individuals to bring to the attention of the appropriate person information regarding suspected improper conduct under the Code. Suspected violations of the policies contained in the Staff Manual, such as, but not limited to, the Non-Discrimination, Anti-Harrassment, Political Participation, and Gifts Policies must be reported in accordance with the procedures set forth in "The Museum of Modern Art Policy and Procedures for Complaints Concerning Violations of Museum Policies of Ethical or Financial Misconduct" or the Staff Manual, as applicable. Covered Individuals are required to come forward with any such information, without regard to the identity or position of the suspected offender.

Reporting pursuant to this and other Museum policies is important. The Museum prohibits intimidation, harassment, discrimination or other retaliation, or, in the case of Key Persons, adverse employment consequences against Covered Individuals who, in good faith, make a complaint, voice a concern or provide assistance to an investigation hereunder or, with respect to actual or possible violations of law, the Code, the Conflict of Interest Policy or other Museum policies, including but not limited to, non-

discrimination, anti-harassment, political participation, gifts and the like. Where possible, the identity of the individual making the report will be kept confidential, even if the complaint proves to be without merit. ***Failure to report knowledge of wrongdoing may itself result in disciplinary action against those who fail to report.***

Investigation of Violations

All reported violations of the Code will be investigated by the Museum as promptly as possible and will be treated confidentially to the extent consistent with the Museum's interests and its legal obligations.

All investigations by the Museum of wrongdoing will be directed by the Office of the General Counsel in coordination with the Board or Authorized Committee and the Department of Human Resources, as applicable. If the result of the investigation indicates that corrective action is required, the Museum will decide what steps it should take to rectify the problem and avoid the likelihood of its recurrence.

Discipline for Violations

The Museum reserves the right to take disciplinary action in appropriate cases for violations of the Code.

Key Persons **Key Persons** Key Persons Key Persons

VIII. INDIVIDUAL JUDGMENT

The foregoing guidelines are to help all of us better understand what we believe to be in the best interest of the Museum, our Covered Individuals, those with whom we do business and the public at large.

Covered Individuals may need to exercise your individual judgment in deciding on a correct course of action. In contemplating a particular situation, Covered Individuals should consider the following factors to arrive at a satisfactory answer:

- Is my action consistent with Museum practices?
- Could my action give the appearance of impropriety?
- Will the action bring discredit to any Covered Individual or to the Museum if disclosed fully to the public?
- Can I defend my action to my supervisor, if applicable, other Covered Individuals and to the general public?

- Does my action meet my personal code of behavior?
- Does my action conform to the spirit of this Code?

Covered Individuals are expected to use good judgment and common sense. This Code is intended to reflect the collective good judgment and common sense of all of us. Whenever you see a situation where this purpose does not appear to be served by the Code, you have the responsibility to bring your concern to the attention of the appropriate individuals described in this Code of Conduct.

APPENDIX

**ACKNOWLEDGEMENT
AND
DISCLOSURE STATEMENT**

Please indicate that you have received, read and will abide by this Code of Conduct, and that you will cooperate with the Museum in implementing this statement of policy, by completing and dating this Acknowledgement and the accompanying Disclosure Statement. These documents are to be returned promptly by Key Persons to the Department of Human Resources, and by other Covered Individuals to the Office of the General Counsel.

1. Have you read The Code of Conduct of The Museum of Modern Art (the "Code"), which is the Museum's statement of policy concerning compliance with law and policy concerning conflicts of interest and other policies?

YES ___ NO ___

2. Will you abide by the Code?

YES ___ NO ___

DISCLOSURE FORM

1. Do you or does any relative (as defined in the Code) have any relationship with the Museum that may represent a conflict of interest, as defined by the letter or spirit of the Code?

yes____ no____

2. During the past 12 months, did you or any of your relatives receive any gifts, gratuities or loans from any person, company, partnership or any other source from which the Museum buys goods or services or otherwise has business dealings?

yes____ no____

3. Do you or any of your relatives have any financial interest, direct or indirect, in any pending or incomplete transaction to which the Museum is, or is likely to be, a party?

yes____ no____

4. Do you or any of your relatives have any financial interest in or relationship with any company, partnership or other enterprise that is a Related Party, as defined in the Conflict of Interest Policy, which leases or sells equipment, supplies, real property, products or services to or otherwise does business with the Museum?

yes____ no____

5. Do you or any of your relatives have any financial interest (or pending financial interest) in another entity with which the Museum or its affiliates are engaged in a business transaction?

yes____ no____

6. Are you related by blood or marriage to any other director, officer or Key Employee of the Museum?

yes____ no____

7. Do you have knowledge of any transaction which, in view of the Code, you feel should be reported to the Museum's Audit Committee or the Office of the General Counsel?

yes____ no____

8. Do you have any knowledge of any misuse or theft of the Museum's assets or property by Covered Individuals or Museum staff which has not been the subject of appropriate action?

yes____ no____

If the answer to any of the above questions is yes, please explain in the space below. Add additional sheets as necessary.

I HEREBY CERTIFY THAT THE ANSWERS TO THIS QUESTIONNAIRE ARE TRUE AND CORRECT.

Signature

Please print your name

Title

Date

Museum of Modern Art Guidelines Concerning Purchase/Promised Gift Arrangements

From time to time the Museum of Modern Art (the "Museum") has the opportunity to purchase works of art on a joint basis with members of the Museum's Board of Trustees and other private persons, with such persons simultaneously making a binding legal commitment to contribute their interest in the work to the Museum at or before death. Such arrangements, which are referred to as "purchase/promise gift arrangements," may enable the Museum to acquire works of art that it otherwise could not afford. This is especially true in the context of a competitive market that has pushed the price of art to historic highs. These arrangements can be beneficial in that they permit the Museum to expand and diversify its collection while maintaining the flexibility to expend funds on other programs and activities that further its educational mission.

For these reasons, in appropriate circumstances, the Museum will undertake purchase/promised gift arrangements, provided they are entered into exclusively in furtherance of the educational mission of the Museum and are structured and approved in a manner consistent with applicable law and the fiduciary duties of the Trustees.

Accordingly, the following guidelines are adopted to guide the Board and staff of the Museum in the evaluation of whether a proposed purchase/promised gift arrangement is appropriate and advisable:

- 1) The Museum's participation in a purchase/promised gift arrangement must be exclusively in order to advance the curatorial and collecting objectives of the Museum.
- 2) At both the Board and committee level, the prospective purchaser/donor must recuse himself or herself from all decisions about the following questions (each of which should be addressed as part of the Museum's decision concerning a proposed purchase/promised gift arrangement):
 - whether the Museum should acquire a particular work;
 - whether it should acquire the work in a purchase/promised gift arrangement;
 - whether the Museum would be acquiring a sufficiently large undivided fractional interest in the work to make the arrangement worthwhile relative to the associated costs and burdens;
 - whether a particular person should be allowed to be the purchaser/donor;
 - if applicable, whether a particular work should be deaccessioned as part of the arrangement;
 - whether the terms of the proposed arrangement are appropriate in light of these guidelines; and
 - whether to proceed with the proposed arrangement.

- 3) All purchase/promised gift arrangements are subject to oversight and final approval by either the Board of Trustees or its Executive Committee, which must be informed of the circumstances in which the purchase/promised gift arrangement was proposed.
- 4) The Museum must consider the availability of reasonable alternatives for funding an acquisition in order for the Board to make a determination as to whether a purchase/promised gift arrangement is at least as beneficial to the Museum's overall best interests as the other alternatives identified.
- 5) The Museum must consider all relevant factors in order to ensure that the purchase/promised gift arrangement does not result in the purchaser/donor's receipt of value in excess of the cost to him or her of participating in the purchase/promised gift arrangement.
- 6) The Museum must seek and (to the extent feasible and not detrimental to the safety or security of the jointly purchased work) exercise all appropriate rights that will protect its interests as a joint owner and secure its rights as the beneficiary of the promised gift of the purchaser/donor.

Any questions about these guidelines should be referred to the Office of the General Counsel.