

DESTINATION NORTH MYRTLE BEACH FIDUCIARY DUTIES, CONFIDENTIALITY AND CONFLICT OF INTEREST POLICY AND BOARD OF DIRECTORS' COVENANT

INTRODUCTION

To ensure compliance with applicable laws and to best serve Destination North Myrtle Beach (Destination NMB) and its officers, board members and committee members, Destination NMB endorses and adopts the following statement of policy regarding fiduciary duties, confidentiality and conflict of interest obligations.

FIDUCIARY DUTIES

Under well-established principles of nonprofit corporation law, a board member must meet certain standards of conduct and attention in carrying out their responsibilities to the organization that they serve. These standards are usually described as the duty of care, the duty of loyalty and the duty of obedience.

- **Duty of Care.** The duty of care refers to the level of competence that is expected of a board member and is commonly expressed as the duty of care that an ordinarily prudent person would exercise in a like position and under similar circumstances. This means that a board member owes the duty to exercise reasonable care when they make decisions as a steward of the organization.
- **Duty of Loyalty.** The duty of loyalty is a standard of faithfulness; a board member must give undivided allegiance when making decisions affecting the organization. This means that a board member can never use information obtained as a board member for personal gain and must act in the best interests of the organization.
- **Duty of Obedience.** The duty of obedience requires board members to be faithful to the organization's mission. A board member individually, and the board as a whole is not permitted to act in a way that is inconsistent with the central goals of the organization. A basis for this rule lies in the public's trust that the organization will manage donated funds and stewards of public funds to fulfill the organization's mission.

CONFIDENTIALITY OF BOARD EXECUTIVE SESSION DISCUSSIONS

To encourage and foster open and candid discussion at its meetings, the Board of Directors of Destination NMB believes that at times, confidentiality must be maintained. Therefore, it is the policy of the Destination NMB Board of Directors that each Board Member shall keep confidential all information relating to discussions at any executive session of meetings unless compelled by legal process to disclose such information, or as otherwise agreed by the board. While board members are free to discuss actions adopted by the board, disclosing any information concerning the discussion of such items during the board meeting's executive sessions is prohibited.

CONFLICTS OF INTEREST

It is the obligation of a nonprofit corporation officer, Board Member and committee member is to avoid "conflicts of interest". A "conflict of interest" is generally defined as a transaction or relationship in which, because the individual is, either directly or indirectly, a party to the transaction or possible

beneficiary of the transaction, there is or may be a conflict between the individual's fiduciary obligations to the nonprofit corporation and the individual's personal or business interests. All board members are to avoid any appearance of impropriety in connection with a conflict of interest and to refrain from entering into an agreement or contract with companies, individuals or other entities that could be construed to be a conflict of interest.

To avoid potential conflict of interest problems, Destination NMB implements the following procedures:

1. Each member shall submit an annual disclosure statement listing all organizations which will, or may be reasonably expected to, engage in business transactions (other than payment of dues or grants) with Destination NMB, and in which such member or a Family Member has a Material Financial Interest or in which the member or a Family Member acts as a director, consultant, partner, trustee, officer, member of the executive committee or employee. Additional disclosures are required as necessitated by new potential conflicts of interest, shall be submitted to Destination NMB President/CEO. A member or Family Member has a Material Financial Interest in an organization if he or she (i) owns, directly or indirectly, more than 5% of the organization's equity interest, (ii) is owed money by the organization in excess of 5% of the organization's overall indebtedness or in excess of 2% of the member or Family Member's net worth, or (iii) receives compensation from the Entity in excess of 2% of the income of the member or Family Member.
2. In advance of any decision or action to be considered by Destination NMB Board of Directors, each member shall disclose any potential conflicts of interest relating to such decision or action. Further, the President/CEO of Destination NMB may also notify such member that a potential conflict of interest may exist based on the information submitted on their disclosure statement or otherwise known to the President/CEO of Destination NMB.
3. Any potential conflict of interest shall be reviewed by the officers of Destination NMB together with the President/CEO of Destination NMB and Destination NMB legal counsel. After such review, one of the following determinations shall be made: 1) No conflict of interest exists relative to the proposed decision or action and the member is able to participate in the discussion and vote regarding such decision or action; or 2) An actual or potential conflict of interest may exist and therefore the member shall refrain from any discussion and vote regarding such decision or action (The interested individual's presence at the meeting may be counted in determining whether a quorum of the board or committee is present, but that individual shall not participate or vote on the decision or action.)
4. After receiving such disclosure, prior to approving the transaction, Destination NMB's Board or the Executive Committee must conclude that the transaction is "fair to Destination NMB " and must approve the transaction without the participation or the vote of the interested individual.

FIDUCIARY OBLIGATIONS AS TO CHAMBER/CVB OPPORTUNITIES

Finally, another fiduciary obligation prohibits an officer or board member of a nonprofit corporation from seizing a "corporate opportunity" for his or her company's benefit or his or her personal benefit or for the benefit of another entity. This means that such an individual may not take advantage of a business opportunity in which the officer or board member knows Destination NMB has a genuine interest and where such an opportunity would be consistent with Destination NMB's purposes, mission and goals as a not-for-profit corporation. Further, if the officer or board member becomes aware of such an opportunity, he or she is obliged to so inform Destination NMB and allow Destination NMB to act first.

PARTICIPATION IN DELIBERATIONS AND ACTIONS

In any case in which there is a question of loyalty, conflict of interest, or corporate opportunity raised, the officer or board member shall not participate in the meeting for the entire time the matter is discussed and voted upon.

This Policy shall, upon adoption by Destination NMB Board of Directors, become immediately effective and shall thereafter be distributed to each officer or board member. Each shall acknowledge receipt of the Policy on a form which also contains a statement that the officer or board member comply with the Policy and is currently unaware of any transaction in which he or she is involved which would constitute a conflict of interest as defined, and that should such a transaction arise, the officer or board member will notify the Board or committee of the circumstances and act in accord with the Policy with respect to that transaction.

VIOLATION OF POLICIES

Board and committee members acknowledge that a violation of any of these policies would cause harm to Destination NMB and frustrate board deliberations. Therefore, if any board or committee member violates this policy, Destination NMB shall treat such violation as his or her resignation from the board or committee.

BOARD OF DIRECTORS' COVENANT

I agree that in view of my service as a Board member of Destination NMB, I will disclose any actual or potential conflict of interest or any situation that might give the appearance of a conflict of interest. This includes both my personal and professional work and my volunteer involvement outside of my volunteer role for Destination NMB.

Upon request of Destination NMB Chair (and in the Chair's case, Destination NMB's Secretary and Treasurer), I will submit a written statement disclosing my business or financial transactions undertaken since the beginning of the preceding calendar year (or at any other time is relevant) that I, any member of my family, or a significant other may have had with Destination NMB or any group or individual doing business with Destination NMB or its contractors.

I further agree that I will not take part in discussions on nor vote on any matter in which I, members of my family, or any significant others have a business or financial interest or in any situation in which Destination NMB's Executive Committee has determined that an actual or potential conflict of interest exists.

I also agree that no part of the assets of Destination NMB shall inure, directly or indirectly, to my benefit, except to the extent I have performed services or for which I am entitled to pre-approved reimbursement for expenses I have incurred on behalf of Destination NMB or as otherwise authorized by Destination NMB.

I recognize that any conflict-of-interest statement that may be required, as described above, is essential to the business operations of Destination NMB and, if requested, would constitute an essential part of this covenant.

I shall keep confidential all information relating to discussions at executive sessions of the Board unless compelled by legal process to disclose such information, or as otherwise agreed by the Board. I understand that while I may discuss actions adopted by the Board, disclosing any information concerning the discussion of such items during the Board's executive session is prohibited.

I agree to abide by Destination NMB Board of Directors Policy Statement concerning Fiduciary Duties, Confidentiality and Conflict of Interest. I understand that my failure to abide by any aspect of the Policy Statement may be treated as my resignation from the Board

Signature

Print Name

Date

Phone

E-Mail

Address /City/State/Zip

Adopted _____