
Authorities Budget Office Policy Guidance



No. 10-01

Date Issued: March 1, 2010

Supersedes: New

Subject: Acknowledgement of Fiduciary Duty

Statutory Citation: Public Authorities Law Section 2824(1)(h)

Provisions: Section 6(i) of Public Authorities Law, as amended by Chapter 506 of the Laws of 2009 (“The 2009 Public Authorities Reform Act” or “PARA”), requires the Authorities Budget Office (ABO) to “develop and issue” a written acknowledgement that all board members must execute as part of their duties and responsibilities under Section 2824 of Public Authorities Law. By signing this acknowledgement a board member is stating “that he or she understands his or her role and fiduciary responsibilities” as well as his or her “duty of loyalty and care to the organization and commitment to the authority’s mission and the public interest.”

Pursuant to PARA, every board member of a Public Authority is required to sign an acknowledgement of fiduciary duty at the time he or she takes the oath of office. The effectiveness of the acknowledgement will be deemed applicable throughout the duration of such board member’s term and/or for as long as such director continues to serve in such capacity. Board members appointed to their positions prior to the effectiveness of PARA and the implementation of this new requirement are required to execute an acknowledgement by May 1, 2010.

Authorities Budget Office Policy Guidance: The primary responsibility of a board member is to understand the mission and public purpose of the Authority and to act in the best interests of the Authority, its mission, and the public. The intent of this written acknowledgement is to re-affirm the importance of this duty to board members.

The ABO is directing all state and local public authorities to use the attached acknowledgement form to satisfy this statutory requirement. Public authorities are to maintain signed copies of the acknowledgement throughout the official term of each active board member. State and local authorities will also be expected to certify as part of the Annual Report submission that these statements were executed in accordance with Section 2824 of Public Authorities Law. The failure to execute this acknowledgment will be considered a failure to comply with the requirements of Public Authorities Law. The failure to act in accordance with the principles stated in this acknowledgment can be considered a breach of fiduciary duty and could result in a recommendation that the board member be sanctioned.

A board member is to sign a new acknowledgement document at the start of each new term to which the board member is appointed.



Acknowledgement of Fiduciary Duties and Responsibilities

As a member of the Authority's board of directors, I understand that I have a fiduciary obligation to perform my duties and responsibilities to the best of my abilities, in good faith and with proper diligence and care, consistent with the enabling statute, mission, and by-laws of the Authority and the laws of New York State. The requirements set forth in this acknowledgement are based on the provisions of New York State law, including but not limited to the Public Authorities Reform Act of 2009, Public Officers Law, and General Municipal Law. As a member of the board of directors:

I. Mission Statement

I have read and understand the mission of the Authority; and the mission is designed to achieve a public purpose on behalf of the State of New York. I further understand that my fiduciary duty to this Authority is derived from and governed by its mission.

I agree that I have an obligation to become knowledgeable about the mission, purpose, functions, responsibilities, and statutory duties of the Authority and, when I believe it necessary, to make reasonable inquiry of management and others with knowledge and expertise so as to inform my decisions.

II. Deliberation

I understand that my obligation is to act in the best interests of the Authority and the People of the State of New York whom the Authority serves.

I agree that I will exercise independent judgment on all matters before the board.

I understand that any interested party may comment on any matter or proposed resolution that comes before the board of directors consistent with the laws governing procurement policy and practice, be it the general public, an affected party, a party potentially impacted by such matter or an elected or appointed public official. However, I understand that the ultimate decision is mine and will be consistent with the mission of the Authority and my fiduciary duties as a member of the Authority's board of directors.

I will participate in training sessions, attend board and committee meetings, and engage fully in the board's and committee's decision-making process.

III. Confidentiality

I agree that I will not divulge confidential discussions and confidential matters that come before the board for consideration or action.

IV. Conflict of Interest

I agree to disclose to the board any conflicts, or the appearance of a conflict, of a personal, financial, ethical, or professional nature that could inhibit me from performing my duties in good faith and with due diligence and care.

I do not have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of my duties in the public interest.

Signature: _____ Date: _____

Print Name: _____

Authority Name: _____

Binghamton Urban Renewal Agency

**ANNUAL CONFLICT OF INTEREST AND DISCLOSURE STATEMENT FOR
BOARD OF DIRECTORS, OFFICERS AND KEY EMPLOYEES**

1. **Are you an independent voting member of the Board? ___ Yes ___ No**

If No, please explain _____ . The BURA is required to disclose the number of independent voting members on the IRS Form 990. A member of the Board of Directors is considered independent only if all three of the following circumstances apply at all times during the calendar year:

- (i) You are not compensated as an officer or other employee of the BURA or of a **related organization** (*list your related organizations here - see definition of Related Organization below and definition of Control in glossary http://www.irs.gov/pub/irs-tege/glossary_instructions.pdf*) except by the City of Binghamton which provides funding, appoints members, and approves loans; and
- (ii) You did not receive total compensation or other payments exceeding \$10,000 as an independent contractor other than reimbursement of expenses under an accountable plan or reasonable compensation for services provided in your capacity as a member of the Board of Directors; and
- (iii) You did not have a transaction with the BURA that is required to be reported on **Schedule "L"**. Schedule "L" requires reporting for **Transactions with Interested Persons**. **Interested Persons** are current or former officers, directors, or key employees, entities owned 35% or more by Interested Persons or family member and entities in which an Interested Person is serving at time of the transaction as an officer, director, or partner (member in LLC) with an ownership interest in excess of 5%, or a shareholder with ownership interest in excess of 5% if the entity is a professional corporation. **Business Transactions** (performance of services, leases, sales of goods, licenses) that must be reported are: (1) all payments during the year between the BURA and the Interested Person which exceed \$100,000; (2) all payments during the year from a single transaction between interested person and the BURA that exceed the greater of \$10,000 or 1% of the BLDC total revenues; or (3) compensation payments by the BURA to a **family member** (see definition next page) which exceed \$10,000. Schedule L also requires reporting for transactions with management companies in which an Interested Person is a 35% owner or officer, director, excess benefit transactions under Section 4958, loans to and from Interested Persons including advances and other advance and Grants and Assistance benefiting Interested Persons.

(this section can be deleted from statement if you specify your related organizations above.

Related Organizations is an organization that stands in one or more of the following relationships to the BURA

_____;

- (i) Parent – an organization that controls the BURA;
- (ii) A subsidiary – an organization controlled by the BURA;

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(iii) Brother/Sister – an organization controlled by the same person or persons that control the filing organization; and

(iv) Supporting/supported – an organization that is a supporting organization of the BURA within the meaning of 509(a)(3) or a supported organization if the filing organization is a supporting organization.)

2. Do you have a family relationship with any officer, director or key employee (see list attached at Schedule “A”)? ___ Yes ___ No. **If Yes, please identify the person(s) with whom you have a family relationship**

_____.

On Schedule O to Form 990, the identity of the individual along with “Family Relationship” will be stated.

Your **family** members including your spouse, ancestors, brothers, sisters, children, grandchildren, great-grandchildren and the spouses of your brothers, sisters, children, grandchildren and great-grandchildren.

3. Do you have a business relationship with any other officer, director, or key employee (see list of officers, directors and key employees attached at Schedule “A”)? ___ Yes ___ No. **If Yes, please identify the person(s) with whom you have a Business Relationship**

_____.

On Schedule O to Form 990, the identity of the individual along with “Business Relationship” will be stated.

Business relationships between two persons include any of the following:

(i) One person is employed by the other in a sole proprietorship or by an organization with which the other is associated as a director, officer, key employee or greater than 35% owner;

(ii) One person is transacting business with the other, other than in the ordinary course of either parties’ business on the same terms as are generally offered to the public, directly or indirectly in one or more contracts of sale, lease, license, loan, performance of services or other transactions involving transfers of cash or property valued in excess of \$10,000 in the aggregate during the organizations tax year; and

(iii) Persons are each a director, director, officer or greater than 10% owner in the same business or investment entity.

4. What is your occupation?_____

5. State your business or investment holdings (non-publicly traded) (e.g. your own company that does business with the BURA or own real estate that leases space to

6. I acknowledge that I have reviewed the attached at Schedule “B” Article VI of the By-Laws of the BURA pertaining to “Conflicts of Interest”. I understand these provisions and agree to comply with these provisions. I understand that BURA is a non-profit

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organization and that in order to maintain its federal tax-exemption it must engage primarily in activities which accomplish one or more of its tax exempt purposes.

Date

Signature

Print Name

Title

Binghamton Urban Renewal Agency

SCHEDULE "A"

List of Current BURA Members

Jared M. Kraham
Brian Seachrist
Daniel Maerkl
Clarence Shager
Ron Lake
Aviva Friedman
Sophia Resciniti

List of Current BURA Officers

Chairman – Jared M. Kraham
Secretary – Brian Seachrist (Acting)
Fiscal Officer – Clarence Shager

Authorities Budget Office Policy Guidance



No. 10-05

Date Issued: October 26, 2010

Supersedes: New

Subject: Annual Board of Directors Evaluation

Statutory Citation: Public Authorities Law sections 2800(1)(a)(15) and 2800(2)(a)(15) and Section 2824(7)

Provision: The 2009 Public Authorities Reform Act requires that the board of every state and local public authority conduct an annual evaluation of its performance. Board member comments are protected from disclosure under Article 6 of Public Officers Law, but the results of the assessment are to be provided to the ABO.

Authorities Budget Office Policy Guidance: Board members must be committed to the highest standards of corporate governance. The board must hold itself accountable to the mission of the authority and the public interest. This annual assessment is a reminder to each board member of his or her duties, why those responsibilities are important, and whether they are performing those duties appropriately. The evaluation provides an opportunity for board members to measure their individual and collective effectiveness, determine if they are following their own policies and procedures, identify areas for board improvement, and to compare how their evaluation of the board's performance compares to that of other board members. This annual evaluation can be a learning tool to educate board members and build a well functioning board.

The Authorities Budget Office recommends that each board member annually perform his/her own evaluation of the whole board. The evaluation should be conducted confidentially with the results compiled by the governance committee. Furthermore, the ABO consulted with the Committee on Open Government, which advised that a board discussion of its performance "would constitute a matter made confidential, by state law that, therefore, could be conducted in private."

To the extent that the results of this evaluation demonstrate the need for the board to improve its performance, amend its practices or procedures, or clarify its expectations of board members, the board is expected to implement suitable corrective actions immediately.

The Authorities Budget Office has developed the following model board evaluation tool that can be adopted by public authorities to meet the needs of their boards of directors. This document should be completed by each board member.

Confidential Evaluation of Board Performance

Criteria	Agree	Somewhat Agree	Somewhat Disagree	Disagree
Board members have a shared understanding of the mission and purpose of the Authority.				
The policies, practices and decisions of the Board are always consistent with this mission.				
Board members comprehend their role and fiduciary responsibilities and hold themselves and each other to these principles.				
The Board has adopted policies, by-laws, and practices for the effective governance, management and operations of the Authority and reviews these annually.				
The Board sets clear and measurable performance goals for the Authority that contribute to accomplishing its mission.				
The decisions made by Board members are arrived at through independent judgment and deliberation, free of political influence, pressure or self-interest.				
Individual Board members communicate effectively with executive staff so as to be well informed on the status of all important issues.				
Board members are knowledgeable about the Authority's programs, financial statements, reporting requirements, and other transactions.				
The Board meets to review and approve all documents and reports prior to public release and is confident that the information being presented is accurate and complete.				
The Board knows the statutory obligations of the Authority and if the Authority is in compliance with state law.				
Board and committee meetings facilitate open, deliberate and thorough discussion, and the active participation of members.				
Board members have sufficient opportunity to research, discuss, question and prepare before decisions are made and votes taken.				
Individual Board members feel empowered to delay votes, defer agenda items, or table actions if they feel additional information or discussion is required.				
The Board exercises appropriate oversight of the CEO and other executive staff, including setting performance expectations and reviewing performance annually.				
The Board has identified the areas of most risk to the Authority and works with management to implement risk mitigation strategies before problems occur.				
Board members demonstrate leadership and vision and work respectfully with each other.				

Date Completed: _____

BINGHAMTON URBAN RENEWAL AGENCY

**BINGHAMTON URBAN RENEWAL AGENCY (BURA)
EMPLOYEE AND BOARD MEMBER PROTECTION POLICY
WHISTLEBLOWER POLICY**

If any employee/board member reasonably believes that some policy, practice or activity of the Binghamton Urban Renewal Agency (BURA hereafter) is in violation of law, a written complaint must be filed by that employee/board member with the Corporation Counsel of the City of Binghamton or the BURA Executive Director.

It is the intent of BURA to adhere to all laws and regulations that apply to BURA and the underlying purpose of this policy is to support the organization's goal of legal compliance. The support of all employees/board members is necessary to achieving compliance with various laws and regulations. An employee/board member is protected from retaliation only if the employee brings the alleged unlawful activity, policy, or practice to the attention of BURA and provides BURA with a reasonable opportunity to investigate and correct the alleged unlawful activity. The protection described below is only available to employees/board members that comply with this requirement.

BURA will not retaliate against an employee who in good faith, has made a protest or raised a complaint against some practice of BURA, or of another individual or entity with whom BURA 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 concerning the health, safety, welfare or protection of the environment.

Actions by an authority. No state or local authority shall fire, discharge, demote, suspend, threaten, harass or discriminate against an employee because of the employee's role as a whistleblower, insofar as the actions taken by the employee are legal.

My signature below indicates my receipt and understanding of this policy. I also verify that I have been provided with an opportunity to ask questions about the policy.

Employee/Board Member Signature

Date