



AMERICAN CANYON ARTS FOUNDATION

Board of Director's Policy Manual

Risk Management & Safety Policy

Adopted/Revised:
October 9, 2013

I. Purpose/Intent

Any activity has an element of risk associated with it. Understanding—and managing—that risk is critical to keep insurance premiums and other costs down, as well as to protect our members and the general public. Practical safety measures need to become part of how we develop and implement programs and events.

II. Authority

The Board of Directors has the authority to establish policies under Article 12, Section 2 of the By-Laws, and approved this policy by adopting Resolution 2013-02.

III. Policy

Section One: Risk Management Defined

1. Managing risk comes down to three basic approaches: avoidance, mitigation and transfer. Using the example of selling alcohol at an event, the three concepts can be explained as follows:
 - a. *Risk Avoidance*: The only way to avoid all risks in selling alcohol is to decide **not** to sell alcohol at all. Avoiding the activity completely avoids the risk—of course, it also means you completely avoid receiving any **benefit** from the activity, too!
 - b. *Risk Mitigation*: Steps could be taken to reduce the likelihood of any problems; for example, checking identification reduces the chance of selling to minors; requiring that all servers are trained in responsible hospitality; or giving preference to “designated drivers.”
 - c. *Risk Transfer*: This would involve allocating some or all of the risk to a third party; for example, purchasing an insurance policy for the event means that if a problem occurs, the insurance company will assume some or all of the cost of damages; or contracting with another group to handle the alcohol, in exchange for a percentage of the net proceeds. Transferring risk also means trading some of the benefit for the risk.
2. Ultimately, risk management means evaluating the risks of any activity and deciding what amount of each strategy should be used to achieve the optimal level of reducing risks while ensuring a reasonable return on the investment of time, money or volunteer effort. It should be done before making the decision to undertake the project or event, and then be a part of the evaluation afterwards.

Section Two: Insurance Requirements and Provisions

1. General Liability Insurance. The American Canyon Arts Foundation (ACAF) will purchase and keep in force general liability insurance. The basic elements of the policy should include the following:
 - a. *Minimum* coverage of \$1 million per occurrence;
 - b. The policy should be based on “occurrence” rather than “claims made;” meaning that it doesn’t matter if the incident leading to a claim is reported years after the policy period.

- c. Because there can be a long gap or “tail” between a claim and its reporting, insurance policies shall be kept as a permanent ACAF record.
 - d. The Company providing the insurance (in contrast to the Insurance broker handling the policy for ACAF) should be well established, and financially secure, with an A.M. Best rating of at least B++ or B+ (Good) [A.M. Best is a rating company, similar to Standard & Poor, that evaluates the fiscal strength and ability of insurance companies to pay claims].
 - e. The policy should include a list of businesses or groups that need to be an “Additional Insured” on ACAF’s policy, as it relates to ongoing programs or events that require it. Usually this is done when ACAF needs to use someone else’s facility, or ACAF is co-sponsoring an event and it is offering its insurance to cover the event.
 - f. The Board may make exceptions to these guidelines, based on availability of coverage, financial considerations and the likelihood of risks.
2. Directors & Officers (D&O) Insurance. This insurance covers any lawsuit brought against ACAF for the allegedly wrongful acts of its Board of Directors. Part of the advantage of this insurance is that it will also cover the legal costs associated with defending against the lawsuit.
- a. ACAF *should* purchase D&O Insurance, if it can afford it. However, the California Corporation Code, Section 5231-33, limits the personal liability of a Board of Director, provided the Director performs in good faith, and is not otherwise conflicted.
 - b. Given this legal protection afforded to Directors of Nonprofit Corporations, the Board may elect to not purchase D&O insurance, provided it makes a finding that it cannot afford to do so at the time it makes that decision. Each year, the Board must take a similar action, until the insurance policy is purchased.
3. Other Types of Insurance. Other forms of insurance, particularly relating to employment (worker’s compensation, unemployment insurance, health care, etc.), will be considered if and when it is required.
4. Purchasing Insurance. Insurance premiums are a major administrative cost for ACAF. The Board should solicit proposals from various brokers, including Associations that use their collective strength to secure the best prices (for example, the California Association of Nonprofits). All other things being equal, relying on local brokers is preferred. Every 3-5 years, the Board should solicit proposals for insurance coverage, to make sure it is getting the best price and coverage.

Section Three: Basic Safety Policy

Mitigating risks is the most practical approach to risk management, and ensuring a safe environment is the best way to keep risks down. Safety needs to play a major role in any ACAF program, service or event, in order to avoid harm to members, volunteers and the general public. Even though we are not required to comply with the State’s Injury & Illness Prevention Program, elements of that program should be considered and implemented to the extent practical.

Section Four: Safety Program

1. Specific Safety Policies. Policies should be developed to cover at least the following subjects. This may be accomplished by simply including relevant information from the Internet assembled into a single document or folder:
 - Lifting and carrying heavy objects
 - Trips & Falls
 - General Office Safety
 - Use of ladders and other basic maintenance equipment
 - Proper use and adjustment of office chairs and other office equipment
 - Electrical Safety hazards
 - Use of potentially hazardous cleaning chemicals or other chemicals that may be used in painting, photography or other artistic endeavors
 - Safety considerations in inclement weather
2. Communications. Safety talks should be periodically included as an agenda item for Board meetings, as well as before any ACAF event is held. The Gallery Manager should also provide periodic safety talks to Gallery Volunteers.
3. Inspections. On a regular basis, the Gallery and other ACAF facilities need to be inspected for any potential safety hazards, such as trips and falls, electrical hazards, broken equipment or excessive clutter. Such hazards need to be addressed, either by removing/repairing the problem, or if it is a financial hardship, at least provide signage or other means of warning about the potential problem.
4. Reporting and Investigations. Whenever an accident occurs, it should be reported to the person in charge, such as the Gallery Manager, Board President or Program Chair (if it occurs during an ACAF event). The incident should be investigated and a written report should be prepared, that covers what happened; what steps were taken to provide care for the individual and/or to secure the site; and then what can be done in the future to avoid similar situations. Depending upon the severity of the incident, it should also be reported to ACAF's insurance provider.

Attachments:

1. Excerpt from California Corporations Code, Sections 5231-5233 (as of September 2013)
2. Accident Reporting form

California Corporations Code

5231.

(a) A director shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner that director believes 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.

(b) In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

- (1) One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented;
- (2) Counsel, independent accountants or other persons as to matters which the director believes to be within that person's professional or expert competence; or
- (3) A committee upon which the director does not serve that is composed exclusively of any or any combination of directors, persons described in paragraph (1), or persons described in paragraph (2), as to matters within the committee's designated authority, which committee the director believes to merit confidence, so long as, in any case, the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause that reliance to be unwarranted.

(c) Except as provided in Section 5233, a person who performs the duties of a director in accordance with subdivisions (a) and (b) shall have no liability based upon any alleged failure to discharge the person's obligations as a director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which a corporation, or assets held by it, are dedicated. [Emphasis added]

(Amended by Stats. 2009, Ch. 631, Sec. 14. Effective January 1, 2010.)

5232.

(a) Section 5231 governs the duties of directors as to any acts or omissions in connection with the election, selection, or nomination of directors.

(b) This section shall not be construed to limit the generality of Section 5231.

(Added by Stats. 1978, Ch. 567.)

5233.

(a) Except as provided in subdivision (b), for the purpose of this section, a self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest and which does not meet the requirements of paragraph (1), (2), or (3) of subdivision (d). Such a director is an "interested director" for the purpose of this section.

(b) The provisions of this section do not apply to any of the following:

- (1) An action of the board fixing the compensation of a director as a director or officer of the corporation.
- (2) A transaction which is part of a public or charitable program of the corporation if it: (i) is approved or authorized by the corporation in good faith and without unjustified favoritism; and (ii) results in a benefit to one or more directors or their families because they are in the class of persons intended to be benefited by the public or charitable program.
- (3) A transaction, of which the interested director or directors have no actual knowledge, and which does not exceed the lesser of 1 percent of the gross receipts of the corporation for the preceding fiscal year or one hundred thousand dollars (\$100,000).

(c) The Attorney General or, if the Attorney General is joined as an indispensable party, any of the following may bring an action in the superior court of the proper county for the remedies specified in subdivision (h):

- (1) The corporation, or a member asserting the right in the name of the corporation pursuant to Section 5710.
- (2) A director of the corporation.
- (3) An officer of the corporation.
- (4) Any person granted relator status by the Attorney General.

(d) In any action brought under subdivision (c) the remedies specified in subdivision (h) shall not be granted if:

- (1) The Attorney General, or the court in an action in which the Attorney General is an indispensable party, has approved the transaction before or after it was consummated; or
- (2) The following facts are established:
 - (A) The corporation entered into the transaction for its own benefit;

CA Corporations Code, Section 5233, continued

(B) The transaction was fair and reasonable as to the corporation at the time the corporation entered into the transaction;

(C) Prior to consummating the transaction or any part thereof the board authorized or approved the transaction in good faith by a vote of a majority of the directors then in office without counting the vote of the interested director or directors, and with knowledge of the material facts concerning the transaction and the director's interest in the transaction. Except as provided in paragraph (3) of this subdivision, action by a committee of the board shall not satisfy this paragraph; and

(D) (i) Prior to authorizing or approving the transaction the board considered and in good faith determined after reasonable investigation under the circumstances that the corporation could not have obtained a more advantageous arrangement with reasonable effort under the circumstances or (ii) the corporation in fact could not have obtained a more advantageous arrangement with reasonable effort under the circumstances; or

(3) The following facts are established:

(A) A committee or person authorized by the board approved the transaction in a manner consistent with the standards set forth in paragraph (2) of this subdivision;

(B) It was not reasonably practicable to obtain approval of the board prior to entering into the transaction; and

(C) The board, after determining in good faith that the conditions of subparagraphs (A) and (B) of this paragraph were satisfied, ratified the transaction at its next meeting by a vote of the majority of the directors then in office without counting the vote of the interested director or directors.

(e) Except as provided in subdivision (f), an action under subdivision (c) must be filed within two years after written notice setting forth the material facts of the transaction and the director's interest in the transaction is filed with the Attorney General in accordance with such regulations, if any, as the Attorney General may adopt or, if no such notice is filed, within three years after the transaction occurred, except for the Attorney General, who shall have 10 years after the transaction occurred within which to file an action.

(f) In any action for breach of an obligation of the corporation owed to an interested director, where the obligation arises from a self-dealing transaction which has not been approved as provided in subdivision (d), the court may, by way of offset only, make any order authorized by subdivision (h), notwithstanding the expiration of the applicable period specified in subdivision (e).

(g) Interested directors may be counted in determining the presence of a quorum at a meeting of the board which authorizes, approves or ratifies a contract or transaction.

(h) If a self-dealing transaction has taken place, the interested director or directors shall do such things and pay such damages as in the discretion of the court will provide an equitable and fair remedy to the corporation, taking into account any benefit received by the corporation and whether the interested director or directors acted in good faith and with intent to further the best interest of the corporation. Without limiting the generality of the foregoing, the court may order the director to do any or all of the following:

(1) Account for any profits made from such transaction, and pay them to the corporation;

(2) Pay the corporation the value of the use of any of its property used in such transaction; and

(3) Return or replace any property lost to the corporation as a result of such transaction, together with any income or appreciation lost to the corporation by reason of such transaction, or account for any proceeds of sale of such property, and pay the proceeds to the corporation together with interest at the legal rate. The court may award prejudgment interest to the extent allowed in Section 3287 or 3288 of the Civil Code. In addition, the court may, in its discretion, grant exemplary damages for a fraudulent or malicious violation of this section.

(Amended by Stats. 1981, Ch. 587, Sec. 7



American Canyon Arts Foundation Accident Reporting Form

Date Incident Occurred	Time:
Location:	
Describe what happened (be specific):	
Witness Name	Contact Info/Phone Number
Witness Name	Contact Info/Phone Number
<input type="checkbox"/> Additional Witnesses	
Factors Involved (Check one or both, and explain) <input type="checkbox"/> Unsafe Act: <input type="checkbox"/> Unsafe Condition:	
What Corrective Actions were immediately taken, if any?	
Recommendation(s) to avoid future incidents.	
Complete for each injured person: <input type="checkbox"/> Additional injured persons	
Name	Address/City/ST/Zip
Phone Number(s)	
Nature of injury:	Affected body part(s):
Status of the injured person: <input type="checkbox"/> Volunteer/Employee <input type="checkbox"/> Artist/Client <input type="checkbox"/> Visitor/Audience Member <input type="checkbox"/> Other _____	Severity of the injury: <input type="checkbox"/> Minor (first aid only) <input type="checkbox"/> Taken to doctor/hospital <input type="checkbox"/> Potentially Severe and disabling <input type="checkbox"/> Fatality
Medical Treatment provided by:	Comments/Additional information:
Person completing this form/date	Contact Info/Phone Number
Reviewed by/date:	