



CENTRAL NEW YORK
COMMUNITY
FOUNDATION, INC.

October 8, 2014
Panel Discussion on
Keeping A Private Foundation
Compliant



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Introductions

- **David Holstein, Esq.**
 - Member and Board of Managers at Bousquet Holstein PLLC
 - Board Member of CNYCF
- **Christine Woodcock Dettor, Esq.**
 - Member at Bousquet Holstein PLLC
 - Former Board Chair of CNYCF
- **Peter Dunn, CNYCF President and CEO**



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Compliance Issues Summary

- Private Foundation Rules
 - Federal
 - State including Non-Profit Revitalization Act
- Legal and Operational Traps for the Unwary
- Case Studies
- Private Foundation Lifecycles
 - Impact of Family Dynamics
 - Generational Tensions



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Private Foundation Rules - Federal

- Private Benefit and Inurement
- Special Restrictions on Activities
- Political Campaign Intervention
- Substantial Legislative Activity
- Failure to File
- Record Keeping
- Public Inspection and Disclosure



Where the Smart Money Gives.



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Private Foundation Rules - State

- State requirements for:
 - Registration with Attorney General
 - Formation and termination process
 - By-laws, annual filings
 - Employees (e.g., unemployment insurance)
 - Officers (e.g., indemnification, D&O insurance)
- Non-profit revitalization act
 - Act adds §8-1.9 of the Estates, Powers and Trusts Law
 - Makes applicable to charitable trusts the new requirements regarding
 - Audits
 - Related party transactions
 - Conflicts of interest policies
 - Whistleblower policies



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Legal and Operational Traps for the Unwary

- Unreasonable Compensation
- Conflicts of Interest
- Excess Business Investment
- Self-dealing through business relationships with trustees/others
- Program Related Investment
- Jeopardy Investments
- Fulfillment of Personal Pledges
- Expenditure Responsibility
- Special restrictions on scholarships and grants to individuals
- Trust issues between family members



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Case Study #1

➤ **XYZ Family Foundation**

- Otherwise unemployable son is Executive Director of a \$10m PF
- Paid \$300,000
- PF subleases office space from Father at great discount
- PF's fabulous art collection is shown throughout the building

➤ **Issues/Best Practices:**

- Unreasonable compensation – penalties and board issues
- Disinterested board and Audit Committee?
- Leasing problem – self-dealing issue with rental relationship
- Personal benefit to Father of art in non-PF office space



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Case Study #2

➤ **More on XYZ Foundation:**

- There's been a family coup!
- The MBA sister takes over
- She wants to have PF invest in her start-up business and invest with her in a new venture investment fund

➤ **Issues/Best Practices:**

- Excess Business Holdings problem
- Self-Dealing Problem – benefit to sister of PF co-investment
- Could this be a Program Related Investment?
- Jeopardy Investment Issues



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Case Study #3

➤ **The Dad Foundation for Education:**

- Trustee gives out scholarship awards and cash gifts to people he meets
- Wants to take over the local school board, so pays political consultants
- Hires friend's consulting firm to counsel scholarship students
- Makes grant payment on his college class reunion pledge

➤ **Issues/Best Practices:**

- No IRS approval of scholarship process or grants to individuals
- Political expenditures a problem
- Expenditure responsibility for non-charitable programmatic expenses
- Self dealing – providing a financial benefit through satisfaction of personal pledge



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Private Foundation Lifecycles

- Family is no longer engaged like they were when founded
- Value has declined or not grown to intended level
- Becomes more difficult to perform fiduciary functions
 - Investment management
 - Accounting review
 - 990-PF filings
- Privacy concerns develop
- Succession plan
- Preserve family's philanthropic goals or founder's legacy



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Why does this work well with the Community Foundation?

- Easy transition to a donor-advised fund with support from the Community Foundation
- We are practiced at facilitating long distance interface
 - We provide the local knowledge
 - Many funds with donors that have moved away
- Ease transition planning should trustees completely disengage
- No startup costs, flexible payout structure
- Reasonable annual fund administration fee
- Privacy enhanced – no more public 990-PF



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