

3.2.13 (Institution-Related Entities)

For any entity organized separately from the institution and formed primarily for the purpose of supporting the institution or its programs: (1) the legal authority and operating control of the institution is clearly defined with respect to that entity; (2) the relationship of that entity to the institution and the extent of any liability arising out of that relationship is clearly described in a formal, written manner; and (3) the institution demonstrates that (a) the chief executive officer controls any fund-raising activities of that entity or (b) the fund-raising activities of that entity are defined in a formal, written manner which assures that those activities further the mission of the institution.

Compliance

Partial Compliance

Not in Compliance

SACSCOC Special Committee Report

The committee requested a copy of the Memorandum of Understanding or similar document with the University of Louisville Real Estate Foundation, Inc. The University of Louisville Real Estate Foundation Inc. has been separated from the University of Louisville Foundation since the beginning of the reaffirmation process. The institution could not provide an appropriate document. It was not possible to assess the compliance with the criteria for this entity.

Recommendation 2: The committee recommends that the institution demonstrate that it has a signed, clear, formal written agreement with the University of Louisville Real Estate Foundation, Inc, that conforms to all the expectations of the standard.

UNIVERSITY RESPONSE

The University of Louisville (UofL) and the University of Louisville Real Estate Foundation (ULREF) have signed a Memorandum of Understanding (MOU) that clearly defines the legal authority and operating control of the institution with respect to the ULREF; describes the relationship of UofL to the ULREF and extent of any liability arising out of that relationship; and defines the fund-raising activities of the ULREF and ensures that those activities further the mission of UofL.

The ULREF was established in 2014 in order to provide infrastructure for future acquisition, development, and management of real estate, primarily on the university's Belknap campus but

also throughout the city, in support of the university. The ULREF Articles of Incorporation [1] state: “The Corporation is organized and shall at all times be operated, not for profit, but exclusively for the benefit of and to carry out the purposes of the University of Louisville.” A list of the current membership of the ULREF is provided [2].

The University of Louisville submits the following information in response to the SACSCOC Special Committee’s recommendation related to Standard 3.2.13:

- The signed Memorandum of Understanding (MOU) approved by the UofL Board of Trustees at its meeting on October 18, 2017, and the UofL Real Estate Foundation (ULREF) at its meeting on October 26, 2017 [3].
- The recommendation for approval of the MOU presented to each board – UofL Board of Trustees [4] and the Board of Directors of the ULREF [5].

The MOU between UofL and the ULREF covers the following information:

- Foundation Name, Seal, and Logotype
- University Governance
- The Foundation’s Relationship to the University
- The University’s Relationship to the Foundation
- Foundation Responsibilities (Asset Management; Foundation Funding and Administration)

- Terms of the Memorandum of Understanding

The MOU provides the following language with regard to the expectations of Comprehensive Standard 3.2.13.

1. Legal authority and operating control of the institution

Section II of the MOU addresses University Governance:

- A. *The University's Board of Trustees is responsible for overseeing the mission, leadership, operations and performance of the University.*
- B. *The University's Board of Trustees is responsible for setting priorities and long-term plans for the University.*
- C. *The University's Board of Trustees, through its designees, is responsible for the employment and compensation of all University employees and for the appointment, compensation, evaluation, and removal of the University President.*

2. Relationship of the UofL and ULREF and Liability

a. Relationship of the two entities

The MOU states:

“ . . . the Foundation exists to promote the interest and welfare of the University.” (Introduction)

“The University and the Foundation shall work as partners to strengthen the University through activities that support the mission and priorities of the University.” (Introduction)

“The Foundation . . . is primarily responsible for purchasing and holding real estate for the University’s overall enhancement in accordance with donor intent (where applicable) and its fiduciary responsibilities.” (Introduction)

“The Foundation acts in a fiduciary capacity to the University.” (Introduction)

“The Foundation is a Kentucky nonprofit corporation that exists separate and apart from the University and is not subject to the University’s control, but which exists to further the University’s charitable and educational purposes.” (III.A)

“The Foundation will use its best efforts to ensure that the activities of the Foundation align with the mission and goals of the University and meet applicable accreditation standards.” (III.E)

“The University President is responsible for communicating University priorities and long-term plans, as approved by the University’s Board of Trustees, to the Foundation.” (IV.A)

“The University President shall be an ex-officio, voting member of the Foundation’s Board of Directors.” (IV.B)

“. . . at the request of the Chair of the University’s Board of Trustees, at least three (3) members of the University’s Board of Trustees shall serve as voting members of the Foundation’s Board of Directors.” (IV. C)

“The Foundation Chief Executive shall be invited on a regular basis to meetings of the University President’s Executive team.” (IV.D)

“The Foundation Chief Executive or his or her designee shall be included as an ex-officio member of any University-wide strategic or facilities planning committee.” (IV.E)

“The University’s Chief Financial Officer shall serve, ex-officio, as a voting member of the Foundation’s Finance Committee.” (IV.G)

“The Foundation will consult with the University prior to the purchase of or disposition of any assets to ensure alignment with the University’s strategic needs and plans.” (V.A.2)

“ . . . real property purchased by the Foundation should directly or indirectly support the mission of the University.” (V.A.2)

“The Foundation will engage an independent accounting firm annually to conduct an audit of the Foundation’s financial and operational records and will provide the University with a copy of the annual audited financial statements, including management letters and responses to management letters within 30 days of receipt or provision. (V.A.5)

“Within 90 days of the issuance of an audit report with findings, the Foundation shall demonstrate to the University that satisfactory progress has been made to implement a corrective action plan.” (V.A.5)

b. Liability arising out of the relationship

The MOU states:

“The Foundation must have a confidential and anonymous mechanism to encourage individuals to report any inappropriateness within the Foundation’s financial management and must prohibit punishment of or retaliation against any employee for reporting problems.” (V.B.7)

“Officers and employees of the Foundation who have check-signing authority or who handle cash or negotiable instruments must be bonded in an amount determined to be reasonable by the Foundation’s governing body, after consultation with the University.” (V.B.8)

“The Foundation’s Board of Directors, after consulting with the University’s insurance and risk management personnel, shall evaluate the potential risks arising from the Foundation’s operation and obtain commercially reasonable amounts of general liability and directors’/officers’ insurance.” (V.B.9)

“All transfers of funds from the Foundation to the University or to the University of Louisville Foundation, Inc. must be documented in writing or electronically in a form that has a retrievable transaction trail.” (V.A.4)

“The Foundation agrees to comply with all state and federal laws applicable to it and to maintain its tax-exempt status at all times.” (VI.E)

3. Control and oversight of fund-raising activities

The MOU states:

“With the exception of receiving private real estate gifts made in support of the University, the Foundation engages in no fund-raising activities on behalf of the University.” (Introduction)

The Foundation’s Board of Directors is responsible for overseeing the Foundation’s operations, including control and prudent management of its assets and of all gifts of real estate made for the benefit of the University and held by the Foundation, consistent with donor intent. (III.B)

“The Foundation shall engage in no fund-raising on behalf of the University, with the exception of receiving, at the request of the President of the University or the President’s formal designee, private real estate gifts made in support of the University.” (IV.A)

“Other than those records created and maintained by the University’s Office of Advancement, the Foundation shall be responsible for, and custodian of donor records related to the gifts received by the Foundation for the University’s benefit and shall make those records available to the University upon reasonable request.” (V.B.10)

SUMMARY

The university now has a signed, clear, formal written agreement with the University of Louisville Real Estate Foundation, Inc., that conforms to all of the expectations of Comprehensive Standard 3.2.13. The Memorandum of Agreement approved by the UofL Board of Trustees on October 18, 2017 and by the ULREF Board of Directors on October 26, 2017 outlines the legal authority of the institution, the relationship of the two entities and liabilities resulting from the relationship, and control and oversight of fund-raising activities.

[1] ULREF Articles of Incorporation

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[2] ULREF Membership

3_2_13_fn02.pdf

[3] Memorandum of Understanding between UofL and ULREF

3_2_13_fn03.pdf

[4] UofL Board of Trustees, Approval of Action Item on MOU, 10/18/17

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[5] ULREF Board of Directors, Approval of Action Item on MOU, 10/26/17

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