



## **BOARD OF DIRECTORS CONFLICT OF INTEREST STATEMENT**

The fiduciary duty of a community association board member is, in essence, two separate levels of performance. They are:

1. The duty to perform the responsibilities of a board member, in a manner each director and officer believes to be in the best interest of the association and with such care, including reasonable inquiry, as a prudent person in a like position would ordinarily use under similar circumstances. This standard of care has also been adopted in most jurisdictions and is often cited as the "prudent person standard" or the "business judgment rule." Stated succinctly directors owe a duty of care to the association and its members and will not be liable for mere mistakes in judgment so long as they were acting in good faith and had a rational basis for their decision.
  
2. The duty of undivided loyalty to the association and its membership. This higher standard of performance is breached when a director acts in his/her own interest or with a conflicting interest.

Thus, a director not only has to perform director duties in good faith and in a manner each director believes to be in the best interest of the association, but also the director owes a duty of undivided loyalty and honesty and must, at all times, avoid any conflict of interest or self-dealing.

Colorado law provides that a person who serves as a board member for a non-profit corporation such as a homeowner association, has a duty to act prudently in good faith and in the association's best interest. There are times, however, when a board member may act to benefit both the association and him/herself. To prevent board members from abusing their position, but still allowing non-profits to take advantage of good business deals that their board members may be able to offer, Colorado statutes allow a board member to do business with the association but require conditions to be met to insure that the association is treated fairly.

In order to act within the statute, the board must first determine whether there is a conflict of interest. Colorado's non-profit statutes define a "conflicting interest transaction" as a contract, transaction or other financial relationship between the nonprofit corporation and (a) a board member, (b) a party related to a board member, or (c) an entity or company in which the board member has a financial interest. A board member need not own a company for there to be a conflicting interest transaction. The board member may own only a small share of the company or may merely work for the company but stand to receive a commission if the company is hired.

Board members are expected to announce any conflict, or appearance of a conflict of interest to fellow members. If the board then determines that a board member has a conflict of interest, the association may still enter into the contract if:

1. The details of the financial relationship between the association and the conflicted board member are disclosed to the board and a majority of the disinterested board members vote in good faith to accept the contract. The conflicted board member may vote, but there must be a majority without his vote.

OR

2. The details of the financial relationship between the association and the conflicted board member are disclosed to the owners and the owners vote to approve the contract.

OR

3. The contract is fair to the association. This condition is only ultimately known after-the-fact by the decision of a court. Therefore, while the board can make a decision that a conflict of interest contract is “fair,” that decision may be overturned by a court.

The board may accept a director’s offer by satisfying any one of the above criteria. Before choosing which of the three criteria to use, the board should give consideration to the appearance of its decision and the political consequences.

In light of these facts, the Board of Directors agrees that conflicts of interest may be allowed if all of the following criteria are met:

1. The conflict of interest results in better pricing for the association when weighted against competitive bidding submitted by like contractors for the same work.

2. The Board shall disclose all the details and carefully document the conflict disclosure in the minutes. If the transaction is later questioned, the board can refer owners back to the minutes and demonstrate that the conflict was fully disclosed, and that the board acted properly by a vote of a majority of the disinterested board members at a board meeting.

3. Once the conflict has been disclosed and while the board is discussing whether the contract should be adopted, the conflicted board member shall be available to answer questions about the conflict and the contract.

4. The conflicted board member shall recuse him/herself from voting, and the conflicted board member shall leave the meeting during the member discussion and the vote.

All director complaints of covenant violations (which includes ACC rule violations) shall be made to the HOA office to be handled in the same manner as any complaint of covenant violation from any resident. No director who was the complaining witness, except the Director of Covenants or the Chair of the Architectural Control Committee acting in their official capacity with the Association, will participate in the deliberations or decisions by the Board of Directors regarding that complaint, unless otherwise authorized by the Board of Directors. No violation of this statement shall invalidate, affect or impair the Association's enforcement of its covenants, architectural control provisions, rules, or any decision by the Board of Directors.

I have read and agree to abide by the terms of this statement.

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*Print name*

\_\_\_\_\_

*Signature*

\_\_\_\_\_

*Date*