



#288 HOA Homefront – Conflicts of Interest – When to Step Aside

By Kelly G. Richardson, Esq. CCAL

If one is involved in a decision affecting or involving that person uniquely as opposed to the community generally, that is a conflict of interest. Directors and committee members should avoid involvement in discussions or decisions in which they have a conflict of interest. Once a conflict presents itself, the only decision is to avoid involvement. No matter how principled a person thinks they are, if they participate in a decision in which they have a conflict, they damage both their and the board's credibility. Worse yet, the action might be set aside later under Corporations Code 7233.

Civil Code Section 5350 provides some minimal definitions of conflict and bars a director or committee member from voting on their own discipline, assessment delinquency, individual assessment for damaging common area, architectural application, or request to add exclusive use area.

The statute is a fine start, in addressing some of the most obvious conflicts, but it does not go far enough. A person with a conflict also should not participate as a director in other matters, including their own damage claim, reimbursement request to the association, complaint against a neighbor, or any other matter in which that person is personally and uniquely involved.

While the statute only bars voting on such matters, a person with a conflict also should not deliberate on a subject in which the person has a conflict. If a director discusses a matter and then recuses (refrains) from voting, that person is using their position to do something other members of the community cannot do – participate in board discussions. Furthermore, a member who discusses “their” issue with their board colleagues also puts the other directors in an unfair position. It is not fair to ask them to deliberate while the conflicted director sits there, staring at them while waiting for the board's decision.

The correct way to respond to a conflict is to announce it at the beginning of the meeting. A director who has a conflict should announce the conflict and ask that the item be moved to the end of the agenda. This way, the conflicted director can leave the meeting before “their” item is discussed, and the minutes will reflect they left the meeting at that point. Handling the conflict openly protects the individual director from accusation of undue influence over their issue and protect the board's ethical legitimacy.

This also applies to closed session discussions. If a director has complained about a neighbor violating the governing documents, that director now has a conflict of interest and should not be present while the rest of the board considers that disciplinary item. It enhances the fairness and the appearance of legitimacy



when the accused homeowner sees the complaining director is not attending the hearing, and that the rest of the board will be deciding the matter.

If a director is in a meeting and it becomes clear that another member has a conflict but has not announced the conflict, mention that there is a conflict, and to protect the director, that person should depart the meeting during discussion of that item.

Handle conflicts properly and preserve the community's invaluable trust and confidence. When conflicted volunteers step aside at the right time, they show that ethical governance is paramount.

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