

PUBLICATION

Understanding and Avoiding Conflicts of Interest Among Board Members

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There are plenty of 'do-it-yourselfers' on Condominium Boards who would rather handle condominium repairs themselves. When the Condominium Corporation needs some work done, taking advantage of the skills and expertise of the professionals and trades people who occupy positions on Condominium Boards may seem like an excellent idea.

Unfortunately, it isn't quite as simple as it sounds. The members of a Board are obligated to discharge their duties honestly and act in good faith; any conflict of interest scenario must be carefully avoided. A conflict of interest situation exists whenever the judgment of a Board member may be unduly influenced by an outside interest, such as personal financial gain.

For example, take a theoretical Board member - let's call him Matt. Matt owns a company that specializes in repairing hot water tanks. As chance would have it, the tank in the apartment-style condo building where he sits on the Board, is in need of repair. Being common property, the Board is obligated to fix it. Why not hire Matt? He is well liked and has a reputable company. It seems like a 'win-win' situation. Not so fast. If the Board is seen hiring their own members, they could find themselves as having acted improperly due to a conflict of interest. If a unit owner hears of this and decides to blow off some steam, the Board could find themselves in hot water.

Conflicts of interest situations are not just about results, but are also about optics. A Board member who attempts to have the Board hire their company at an inflated rate is obviously not acting in good faith. However, even if the rate charged by the Board member's company is competitive, a conflict of interest situation still exists. In no way is a Board member to be seen using their position on the Board to enhance their commercial or other interests.

So how can the Board hire Matt's company while acting in good faith and avoiding a conflict of interest? Luckily, the Condominium Property Act offers a straightforward solution. If a Board member has a "material interest" in an agreement or transaction to which the Condominium Corporation is a party, the member must declare their interest, abstain from voting on the matter, and cannot be counted when determining whether a quorum exists. If these steps are followed and the matter is approved by the remaining Board members, then Matt and his

company can complete the repair project, and even pop home for lunch! Note: this does not apply to situations where the only reason a Board member has a “material interest” is by virtue of their ownership of a unit.

Boards must tread very carefully when it comes to conflict of interest situations. If there is any question as to whether a conflict of interest has arisen, legal advice should be sought. Boards should also consider the practical ramifications of engaging a company in which a Board member has an interest, even if the above steps are taken. This is especially true when it comes to larger projects. Even if legally clear, a disgruntled set of unit owners may still raise concern, and sometimes the best victory is the battle not fought.

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