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ASSOCIATIONS

Board member cannot also work for management company

Conflict arises when dual role divides loyalties.

By Stephen Glassman and Donie Vanitzian, Special to The Times
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Question: Is it proper, legal and ethical for a member of the homeowner association board to work for the management company that the board hired?

Answer: No to all three. All association board directors must avoid both actual and potential conflicts of interest. Because of their positions as fiduciaries, board directors must avoid even the appearance of a conflict.

Under the Davis-Stirling Act, volunteer directors cannot be compensated except for reimbursement of necessary expenses. This law provides that insurance coverage extends only to those directors who are volunteers. It also says board directors have only a qualified immunity, meaning that breaking the law may leave them uninsured or personally liable for damages.

It is definitely not a good business practice to have a board director simultaneously employed by the association's property management company.

Each board director owes the association a duty of loyalty. The management company employees would owe a duty of loyalty to their employer. A director wearing these two hats is immediately placed in a position of conflict.

Even after disclosure of the conflict, the director likely would be breaching his fiduciary duty even if he abstained from voting.

The statutory intent was that directors not be simultaneously employed by a vendor of the association because doing so puts the association in the awkward position of pitting its best interests against those of a third-party vendor. Here, the third-party vendor happens to be the management company, but it could be any third-party vendor used or employed by the association.

If the board considers terminating the services of that management company, the same board director would be privy to the deliberations. In the event of a lawsuit between the association and the management company, that board director would be in yet another conflicted position.

The board also would have a duty to confer with the association's insurers to ensure that the directors' fidelity bond is not jeopardized, and that the other directors remain under the protection of insurance.

The board must take steps to minimize the risk of conflicts of interest among its directors, vendors and employees.

Self-management, the impetus behind statutory indemnification, is meant to protect all uncompensated voluntary board directors and the association's titleholders in controlling their property, costs and operation.

When this type of conflict exists, the best solution is twofold: Immediately remove the director from the board, allowing him to continue to work for his other employer. The board may then terminate the management company from the association's employ, thus avoiding any possible conflict as it relates to the best interests of the association.

Send questions to P.O. Box 11843, Marina del Rey, CA 90295, or e-mail noexit@mindspring.com.

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