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My Brother Is a Landscaper..

Mark A. Holmgren, Esq.

Boards of directors of planned communities are periodically confronted with conflicts of interest. For example, an association may be interested in hiring a new landscaping company. A board member may know a landscaper he would like the association to hire. Is this a conflict?

Arizona law provides guidance. A.R.S. § 33-1243 governs condominiums, while A.R.S. § 33-1811 governs planned community associations. Both statutes include identical language, which apply to any situation where “any contract, decision or other action for compensation taken by...the board of directors would benefit any member of the board of directors or any [related person], that member of the board of directors shall declare a conflict of interest for that issue.” The board member must declare his conflict at an open meeting before the board discusses or takes action on the issue, but the member may still cast a vote on the matter.

It may seem counterintuitive that a board member with a clear conflict may still vote on a matter, but that provision is necessary for developer-controlled boards to be able to function, and it applies equally to homeowner-controlled boards. As the law includes a requirement to disclose the conflict, there is an inherent presumption that a transparent process will result in a fair outcome to the association as a whole.

In the case of the board member that “knows” a landscaper, it could be a conflict, e.g., the landscaper is a relative or the landscaper gives the director some benefit (money or otherwise). It may not be a conflict under the foregoing statutes if the director simply knows a third-party landscaper. In that case, there would be no conflict to declare.

The statutes provide that, “Any contract entered into in violation of this subsection is void and unenforceable.” That means that neither party to the contract would be able to enforce its terms. Thus, if an association contracted with a landscaper in violation of the statutes, the landscaper would be powerless to enforce the agreement despite having no knowledge of the contract’s illegality.

The governing documents of a community may enable a community to adopt rules governing how the association handles conflicts that arise. Those policies should be harmonious with the statutory requirements. It may be tempting to draft a policy that is more restrictive than the statute, possibly by preventing directors with a conflict from voting on a matter, but such restriction may be unenforceable.

The conflicted director may correctly argue that the applicable statute gives him a right to cast a vote.

It is important to note that Arizona law does not prohibit associations from entering into contracts where a member of the board of directors has a conflict of interest. Arizona law simply requires disclosure of the conflict prior to any discussion or action on the matter.

If you have questions about conflicts of interest, please contact Mark Holmgren or another attorney in the office.

Carpenter, Hazlewood, Delgado & Wood, PLC.
1400 E Southern Ave. Suite 400 | Tempe, Az 85282