

## A FIELD GUIDE FOR BOARD MEMBERS

### *Conflicts Of Interest*

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*This marks the eleventh installment in a series for board members about commonly faced questions and issues. Many of these challenges require a combination of legal, political and practical solutions. Hopefully these articles will be useful for board members in determining what is in the best interest of the association.*

Would you consider the following a conflict of interest on the part of the board member? A homeowner appeals to the board from a decision by the Architectural Review Committee denying the construction of a backyard tennis court. One of the board members lives next door to the homeowner and has made it clear to anyone who will listen that he is opposed to the tennis court. The homeowner has requested the board member excuse himself based upon conflict of interest.

Have you made your ruling? You might be surprised to discover that the board member does not have to excuse himself from deciding on the appeal...although it may still be a good idea to voluntarily step down to avoid allegations of bias. A legal conflict of interest only exists when it is financial in nature. Even then, it may be allowed when certain procedures are followed and the bylaws for the association do not prohibit conflicts of interest.

The legal definition of a conflict of interest is controlled by the Georgia Nonprofit Corporation Act ("Act"). A conflict of interest exists under the Act when the transaction involves a direct financial interest of the board member, a relative or in-law of the board member; or any other person who lives in the household.

A conflict of interest is allowed if the board member fully disclosed the conflict to the board, and did not participate in the deliberation or vote. There is an old saying in Washington that the cover-up is worse than the crime. This same principle applies to board members. The lack of disclosure is worse than the conflict of interest.

If the board member properly discloses the conflict of interest it is much more likely that the association's insurance coverage will apply in the case of a lawsuit by a homeowner. If the conflict is not properly disclosed, the board member may be denied coverage under the insurance policy's 'intentional act' exclusion.

Although financial conflicts of interest are allowed under the Georgia Nonprofit Corporation Act, the bylaws for the association may prohibit them. If this is the case, even disclosing the conflict will not insulate the board member from liability.