Florida Community Associations: Board Member Conflict of Interest

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With the number of community associations throughout Florida and the constant rotation of board members via yearly elections and other means, it is inevitable that conflicts of interest occasionally arise. For example, maybe the preeminent landscaping company in town just happens to be owned by an association's vice president? Or, what if the best pool guy in the area is the son of a current board member? Such conflicts do not mean the association is automatically relegated to lower quality service. Moreover, the existence of a conflict in interest is not inherently a bad thing or evidence of corruption. The law requires board members to disclose conflicts of interest, and the Florida Statutes establish certain procedures that must be followed when conflicts exists. This blog post will provide an overview of the disclosure requirements when association board members have a conflict of interest, according to the Florida Condominium Act and the Florida HOA Act.

If an association desires to enter into a contract or other transaction with any of its board members or with a business entity in which a board member has a financial interest, the board must first take certain actions. For condo associations, those actions are described within Section 718.3026(3)(a)-(d), Florida Statutes. For HOAs, the corresponding statute is Section 720.3033(2)(a)-(d), Florida Statutes. Associations are also corporations under Florida law—most often non-profit corporations—so the disclosure requirements and procedures found within the Florida Not For Profit Corporation Act also apply.

The disclosure process and voting procedures are the same for both condo associations and HOAs. That process is as follows:

1. The association must comply with the requirements of the Florida Not For Profit Corporation Act, specifically, Section 617.0832, Florida Statutes.

2. The disclosures required by Section 617.0832, Florida Statutes, must be entered into the written minutes of the board of director meeting and member meeting where the disclosure is announced.

3. Approval of the contract or other transaction shall require an affirmative vote of two-thirds of the directors present.

4. At the next regular or special meeting of the members, the existence of the contract or transaction shall be brought up for a vote and may be canceled by a majority vote of the members present. Should the members cancel the contract, the association is only liable for the reasonable value of the goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other form of penalty for such cancellation.

Because compliance relies heavily on the disclosure requirements contained within Section 617.0832 of the Florida Not For Profit Corporation Act, it is important to understand what those requirements are. Those requirements are as follows:

1. The relationship or interest presenting the director(s) conflict must be disclosed to the entire board of directors or the committee that is responsible for approving the contract or transaction by a vote. The conflict-of-interest transaction must receive the affirmative vote of a majority of directors who have no conflicting relationship or interest. However, a transaction may not be authorized, approved or ratified by a single director. The presence of, or vote cast by, a director having the conflict of interest does not affect the validity of the approving vote made by the other non-interested directors.

2. The relationship or interest presenting the director(s) conflict must be disclosed to the members (i.e., property owners) entitled to vote on such a contract or transaction, if any, and the members approve it by either vote or written consent. The conflict-of-interest transaction is approved if it receives the affirmative vote of the majority of the voting interests entitled to vote. However, the director(s) who has the conflicting relationship or interest may not vote along with the members.

3. Or, the contract or transaction is determined to be fair and reasonable as to the association at the time it is authorized by the board, a committee, or the members.

The statute makes clear that, so long as these disclosures are made to the appropriate parties, no contract between an association and an interested director, or a business entity in which a director has a financial interest, is void or voidable simply because such interest exists or because the director is present at the meeting where the contract or transaction is approved or because the interested director's vote was counted for the approval if the director was permitted to cast a vote. Fla. Stat. § 617.0832(1).

The important thing to remember is that an accurate record of complying with these disclosure and voting requirements must be captured in the written minutes of any such meeting and maintained within the association's official records. The notice and agenda requirements for the related board and member meetings must be strictly followed as well or the actions taken at those meetings are invalid. As always, it is recommended that board members consult with their association attorney regarding any concerns they have related to the statutory requirements involving board member conflicts of interest.