

GUIDELINE POLICY – Conflict of Interest Strata Council Members

Where a Member has a potential conflict of interest in respect of a matter before a Council, the Member will refrain from participation in any discussion of the matter, and will absent him or herself from such discussions until the Strata Council Chair has been advised of the circumstances and a determination on the Member's ability to serve has been made.

Definition

For the purposes of this Policy, a Member is in "conflict of interest" when the Member's

1. personal interest, or
2. the interest of the Member's close friend, family member, business associate, employer, corporation or partnership in which the Member holds a significant interest, or a person to whom the Member owes an obligation interferes with the Member's ability to discharge fairly, impartially and without bias those duties owed to Council.

Exceptions

For greater certainty, a Member is not in a conflict of interest where:

1.
 - a) The Member's personal interest in only because the Member is part of a recognizable sector of society (for example, but not limited to, the same racial, ethnic or religious group, or the same professional or occupational group); and
 - b) The Member's personal interests are not preferred in degree or kind over other Members of that sector; or
2. The Council, having been informed of the Member's conflict of interest, agrees by a majority resolution that the conflict is not disqualifying where it is fair and reasonable to do so.

Conflict of Interest Includes a Perceived Conflict of Interest

For the purposes of this policy, the term "conflict of interest" includes a "perceived conflict of interest".

A Member has a "perceived conflict of interest" where there is a reasonable perception that the Member's ability to discharge fairly, impartially and without bias those duties owed to the Council could be affected by a personal interest or the interest of a person listed in paragraph 1(b) above and in accordance with section 31 of the Strata Property Act (SPA).

A Financial Interest is a Disqualifying Conflict of Interest

For greater certainty, subject to paragraph 2, a Member is in a conflict of interest any time the Member has a personal financial interest in a matter which would be affected by a decision made by the Council further to section 32 and 33 of the Strata Property Act.

A Conflict of Interest Must be Disclosed

A Member who has a conflict of interest in an issue that comes before the Council on which the Member sits must (section 32 of the SPA):

Disclosure of conflict of interest

A council member who has a direct or indirect interest in

- (a) a contract or transaction with the strata corporation, or

(b) a matter that is or is to be the subject of consideration by the council, if that interest could result in the creation of a duty or interest could result in the creation of a duty or interest that materially conflicts with that council member's duty or interest as a council member, must

- (c) disclose fully and promptly to the council the nature and extent of the interest,
- (d) abstain from voting on the contract, transaction or matter, and
- (e) leave the council meeting
 - (i) while the contract, transaction or matter is discussed, unless asked by council to be present to provide information, and
 - (ii) while the council votes on the contract, transaction or matter.

The Member may advise the Council Chair whether the Member considers the conflict of interest to be disqualifying and the reasons for the Member's position.

The Strata Council Chair Must Review a Disclosed Conflict

The Council Chair will review a disclosed conflict, considering:

1. all of the facts disclosed,
2. the requirements of this Policy, and
3. the Council's role and purpose, to decide whether the Member is in a conflict of interest which disqualifies the Member from serving in a particular capacity and/or on the Strata Council.

If the Council Chair is unable to make a determination with respect to a potential conflict of interest, the matter will be referred to the Council. The Council will make its decision by majority resolution. A clear description of the nature, scope and effect of the Council's decision, and a brief description of the reasons for the decision will be communicated to the Member in writing. The Member will have an opportunity to address the Council, either in a meeting or in writing, if the Member disagrees with the Council's decision. The Council will decide, by majority vote, whether it wishes to change its decision, in any manner, after it hears from or reads the written communication of the Member.

Results of Conflict Review

If the Council Chair or the Council decides that the Member is not in a conflict of interest, or the conflict of interest is not disqualifying, the Member will be reinstated to the Advisory Group for participation on the matter at issue.

If the Council Chair decides that the Member is in a conflict of interest that is disqualifying, the Member shall have the right to appeal that decision to the Council. The Council will make its decision by majority resolution. A clear description of the nature, scope and effect of the Council's decision, and a brief description of the reasons for the decision will be communicated to the Member in writing. The Member will have an opportunity to address the Council, either in a meeting or in writing, if the Member disagrees with the Council's decision. The Council will decide, by majority vote, whether it wishes to change its decision, in any manner, after it hears from or reads the written communication of the Member.

If a Member's Ability to Serve is Impaired

A Member who finds that conflicts of interest substantially limit the Member's ability to participate on the Strata Council should consider resigning from the Council.

Readers are cautioned that these statements may not be appropriate for their purposes and that this guide has been provided for information purposes only and that appropriate legal advice should be obtained.