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CONFLICT OF INTEREST

A.R.S. § 33-1243 [Arizona Condominium Act] and A.R.S. § 33-1811 [planned community statutes] govern conflicts of interest. The rules on conflicts of interest are as follows:

1. If a contract, decision or other action “for compensation” would benefit a member of the board, or a board member’s family, the board member must:
 - A. Declare a conflict of interest;
 - B. The declaration of conflict of interest must be in an open board meeting; and
 - C. The declaration of conflict of interest must be made before the vote is taken on that issue.

Once the conflict of interest is declared, the Board member with the conflict of interest can vote on the issue. The statutory provisions are in significant conflict with the Arizona Nonprofit Corporation Act. A.R.S. § 10-3860 through 10-3864 imposes strict requirements on directors who contemplate “conflicting interest transactions.” For example, A.R.S. § 10-3862(B)(2) prohibits a director who has a “conflicting interest” with respect to a proposed transaction from participating in the discussions of the matter or voting on the matter. In addition, A.R.S. § 10-3830, a portion of the Arizona Nonprofit Corporation Act, requires that directors act in “good faith” and with the “care an ordinarily prudent person in a like position would exercise under similar circumstances.” Therefore, directors who vote on “conflicting interest” transactions in violation of the Arizona Nonprofit Act will do so at significant risk. All directors who are involved in potential conflicting interest transaction would be prudent to recuse themselves from all discussions and votes on any issue that is a conflict of interest, despite the language in the statute.