

The New York Times

SUNDAY, DECEMBER 6, 2009

What Constitutes A Conflict of Interest

Q I am a shareholder in a Manhattan co-op and want to know if a conflict of interest exists if a member of the board is also an employee of the managing agent.

A "There is certainly a potential for a conflict in this situation," said Andrew Brucker, a Manhattan co-op and condo lawyer, "but the fact that the board member is an employee of the management company does not, in and of itself, constitute a conflict."

He said that if the board ever had to vote on a matter that directly affected his employer — like a rise in the management fee, or the termination of the management agreement — the board member should not take part in either discussing the issue or voting on it.

"The only qualification under New York law for a director is that he or she be over the age of 18," Mr. Brucker said, but "it is very common for co-op bylaws to contain other qualifications." For example, he said, they may provide that the director must be a shareholder in the co-op.

"I would suggest to the writer that he carefully check the bylaws to be sure that the management employee is entitled to a seat on the board."

JAY ROMANO