



ARIZONA LEGISLATIVE ACTION COMMITTEE

ACTION ALERT

Please contact members of the Arizona State Senate, and ask them to vote NO on SB 1288!

The Community Associations Institute opposes SB 1288 (HOAs; board conflicts). This proposed legislation is redundant and unnecessary as almost all HOAs are non-profit corporations that are governed by the Nonprofit Corporation Act (“NPCA”).

The NPCA already contains an entire process for addressing conflicts of interest, found in Sections 10-3860 through 10-3864 of the NPCA.

Section 10-3860(1)(a) provides that a Director has a conflicting interest in a decision of the Association if the Director is a party to the transaction or if the Director “Has a beneficial financial interest in or is so closely linked to the transaction and of such financial significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if he were called on to vote on the transaction.” There is a conflict if the Director or a related person (i.e. family member) has a financial interest in the transaction. There is also a conflict if (i) the Director is a “director, general partner, agent or employee” of the entity involved in the transaction or (ii) if the transaction is with an individual and such individual is a “general partner, principal or employer” of the Director.

Sections 10-3861(B) and 10-3862 of the NPCA state that a conflicting interest transaction will not be set aside by a court if the transaction is fair to the Association, approved by the Members, or approved by a majority of (but at least two) Directors that do not have a conflicting interest in the transaction.

In order to approve a conflicting interest transaction by the non-conflicted Directors, in accordance with section 10-3862 of the NPCA, the Board needs to adhere to the following procedure.

- The Director who has a conflict must declare the conflict and disclose “All facts known to the director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.”
- If the Director makes this disclosure, the Director can participate in the discussions of whether the HOA should enter into the transaction and can vote.
- If the Director has a professional obligation not to disclose some relevant information, the Director must declare the conflict, and why they cannot disclose certain information. In this situation, the Director would be prohibited from participation in the discussions of, and voting on whether the HOA should enter into the transaction.
- After the required disclosures, the Director’s conflicting interest transaction must be approved by the affirmative vote of a majority, but at least two, of the Directors voting on the matter who do not have a conflict.

Because there is already a very thorough process in place for addressing conflicts of interest under the NPCA, SB 1288 would create unnecessary confusion and conflicts.

Ask Your Legislator to Vote NO on SB 1288!

To find your Legislative District and who represents you at the Arizona Legislature click [HERE](#).



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Community Associations Institute
Arizona Legislative Action Committee
11225 N. 28th Drive, Ste. B102 Phoenix, AZ 85029
602-388-1159 • 602-388-1153 (f) • info@cai-az.org