Members of the Board of Directors have a “duty of loyalty” to the Association for which they serve. That means that they have a duty to (1) avoid, (2) disclose, and (3) resolve any possible conflicts of interest that might arise.

1. Board members with a potential conflict should:
   A. Disclose all potential conflicts;
   B. Abstain from any vote on the matter; and
   C. Avoid even the APPEARANCE of undue influence or impropriety by avoiding discussions of subjects where a conflict might arise.

2. Where there may be a conflict, the Board should:
   A. Determine if a transaction is fair to the Association;
   B. Document the steps taken to avoid conflict of interest so that if a suit is filed, proof will be available; and
   C. If you sense that someone else is involved in a potential conflict of interest, raise the issue and have the Board’s written minutes reflect your concern.

3. Every Board member of every profit and nonprofit corporation owes the following duties to the corporation:
   A. Duty of Loyalty. This requires a director to have an undivided allegiance to the organization’s mission when using either the power of the position or information possessed concerning the organization or its property, prohibiting a director from using the position for information so as to secure financial benefit for himself or another person or organization.

   B. Duty of Care. The Colorado Corporation Code states it as follows: “A director shall perform his duties as a director, including his duties as a member of any committee of the board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interest of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.”
C. **Duty of Obedience.** A director must carry out the purposes of the Association, as expressed in the Association’s Declaration, Articles of Incorporation and Bylaws. Directors may not deviate in any substantial way from this duty, though there is always flexibility as to how those purposes are best fulfilled. Included in this duty is the requirement of complying with the law and the documents.

D. **Examples of conflict:**

1. A conflict potentially may arise where a director decided to bid at a foreclosure sale of a unit.

2. A conflict of interest may also arise if directors selectively enforce the Association’s covenants and rules and regulations. If a director (or a friend of a director) violates the pet rules or fails to pay an assessment, they must be treated the same as anyone else.

3. A potential for conflict may arise if a director stands to make a profit from the Association, such as attorneys on the Board getting a fee for legal work, or insurance agents selling insurance to the Association, or contractors agreeing to rebuild fences, replace roofs, or mow lawns.

4. Colorado Revised Statutes, Section 7-128-501 defines a conflicted interest transaction as any contract, decision, or other action taken by or on behalf of the Board which would financially benefit (a) any member of the Board, or (b) any person who is a parent, grandparent, spouse, child, or sibling of a Board member, or (c) a spouse or child of such sibling, or (d) an entity in which a Board member, or any person who is a parent, grandparent, spouse, child, or sibling of a Board member, or a spouse or child of such sibling, is a director or officer or has a financial interest.

4. **Board members must avoid self-dealing:**

   A. Example of self-dealing: if a director, or someone with whom a director has a close relationship, has an interest in a business, such as maintenance or construction company, it is **prohibited** from contracting with the Association unless the proper disclosures are made and the appropriate steps taken.

   B. Disclosure and fairness usually protect a director from potential liability for breach of loyalty in transactions with the Association. If a director (or their friends) profit from the Association **without disclosure**, or in a manner **unfair** to the Association, the director may be liable to the Association for all profits received from the breach of loyalty and all
damages caused by the breach of loyalty. Some courts have also held the director liable for punitive damages for breach of fiduciary duty.

5. The Board must avoid and manage conflicts of interest by:

A. Ideally, the Board should consist primarily of people who are financially disinterested.

B. Adopt policies on how to deal with conflicts, through a formal resolution adopted by the Board.

C. Directors and officers who have possible conflicts should fully disclose those possible conflicts to the Board. In the event a Board member has a conflict of interest, then, in advance of entering into a conflicting interest contract, decision or action, that interested Board member shall declare at an open meeting of the Board, that a conflict of interest exists and shall describe in detail all of the particular facts of the conflict of interest. The interested Board member may deliver to the Board a letter setting forth a detailed summary of the conflict of interest, which letter shall be read out loud by a non-interested Board member at an open meeting of the Board.

D. Avoid participation in discussion where there is a conflict (even being present during a discussion might be an improper influence). Don’t influence the other Board members either directly or indirectly.

E. Avoid learning or disclosing confidential information.

F. Scrupulously avoid voting if you might have a conflict (even being present during a vote might be improper influence).

G. Be certain that all activities while on the Board of the Association further the Association’s interests.

H. If a Board member might profit personally, by earning fees, then: engage in competitive bidding to be sure the fees, products, services, etc. are competitive; have the Board minutes reflect in full detail that a conflict does not exist and that the Board member is authorized to earn a profit by conducting business with the Association.

6. A Community Association Institute (CAI) GAP report says: “In discussing all new or old business at board meetings, the association president should inquire whether any director has or anticipates any actual or potential interest in the outcome of the board decision which might create a conflict of interest, whether such interest is financial or otherwise...The minutes of the board
meeting should note the president’s call for conflicts and any disclosure made by directors. If the subject matter involves a transaction with the director, the board may wish to establish and refer the matter to a disinterested conflicts committee to make a recommendation as to whether the proposed transaction is fair and in the best interest of the association. The committee could be at least partially composed of owners who are not directors. Past presidents or other former board members could be tapped for this committee.”

7. If any Board member feels that his or her activities or roles in other entities may have a substantial detrimental effect on your Association, or violate any of the duties owed to your association, there are three basic alternatives:

A. Resign.

B. Do not participate in those issues; and

C. Abstain from voting.

8. Initially, only the Board and individual Board members can decide if an actual conflict exists, and how to handle the conflict. It might be necessary to seek a legal opinion from your attorney, or to ask a court for legal decision. The Board and the officers should strictly adhere to a policy of avoiding conflicts. It is not just an individual responsibility, but also a collective responsibility.

9. Board members do have a duty to disclose any and all information obtained through their involvement in other entities if something is learned while serving on the Board of another organization, there may be a duty to inform and share with the Association even if it violates confidentiality to the other organization.