

Lasser Law Group

New Disclosure Requirements For Board Members

Michael Kayam · Tuesday, January 30th, 2018

A new New York State law was recently enacted, effective January 1, 2018, which requires board members involved in interested transactions to provide disclosure of these transactions to the owners in their associations. The new law adds a new Section 727 to the New York Business Corporation Law (the "BCL") and a new Section 519-a to the New York Not-for Profit Corporation Law (the "NPCL") to ensure that boards are aware of the conflict of interest laws which apply to them and so owners are notified of any interested transactions. An interested transaction is a contract or transaction in which a board member has a substantial financial interest. (E.g., a board member's contracting company doing work for the association.) (Note: although the BCL and NPCL generally only apply to cooperatives, it would be prudent for boards of homeowners associations and unincorporated condominiums to follow the same procedures.) The responsibility for compliance with these new legal requirements falls upon the association. Therefore, as a practical matter, managing agents and board presidents should try to ensure compliance by their associations.

In order to comply with these new legal requirements, at least once each year the association must:

1. Provide a copy of BCL Section 713, <http://codes.findlaw.com/ny/business-corporationlaw/bsc-sect-713.html> (or NPCL Section 715, if applicable, <http://codes.findlaw.com/ny/notforprofit-corporation-law/npc-sect-715.html>) to each board member. (Practice Tip: each board member should be required to sign a form stating that he or she received a copy of the statute at the time it is distributed.)

2. Provide an annual report to all owners that lists all contracts voted upon by the board which involved an interested board member or a report stating there were no interested contracts voted upon by the board. The annual report must include the following information for each specific contract that involved an interested board member:

a. A description of the work or services being performed, information on the contract recipient, and the amount and purpose of the contract;

b. A list of all meetings held by the board to discuss or vote on the contract, including

board member attendance, how each board member voted, and the results of the vote;
and

c. The date the contract would be and remain valid.

d. Each board member must sign the annual report.

e. If during the year there were no contracts voted upon which involved an interested board member, the board members must all sign and send to all owners a disclosure statement stating that “No actions were taken by the board that were subject to the annual reporting requirements pursuant to Section 727 of the BCL (or Section 715 of the NPCL).”

One practical way to comply with these new disclosure requirements would be to distribute the annual report together with the annual meeting notice which is sent to all owners each year prior to the association’s annual meeting.

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