



CONFLICT OF INTEREST - PROPERTY MANAGEMENT SERVICE PROVIDERS

Summary: Property management companies sometimes contract with other individuals and companies in order to provide services to the owners/clients of the properties they manage. These services may include, but are not limited to, landscaping, snow removal and painting. If a property management company contracts with an individual or company for the provision of services and that individual or company is related to the property management company, either through family relationships or associations or ownership structure etc., that relationship or ownership structure must be disclosed to owners/clients as a conflict of interest. [See: *Real Estate Act Rules*, s.1(1)(h), s.41(a)(d)(f)(g), s.54(3)]

The obligations of industry members to avoid conflicts of interest, and to disclose conflicts of interest to clients when they arise in the course of providing services to clients are long standing obligations.

The *Real Estate Act Rules*, s.41(d) and (f), are clearly stated and apply to all industry members. Section 41(d) states industry members must fulfill their fiduciary obligations to their clients and s.41(f) states they must disclose to their clients at the earliest practical opportunity, any conflict of interest they may have in the course of providing services to, or in their dealings with, a client.

What is a conflict of interest?

For the purposes of the *Real Estate Act Rules* [s.1(1)(h)] the following definition applies:

“conflict of interest” means a real or apparent incompatibility between an industry member’s interests and the interests of the client or potential client.

It is important to recognize the determination of whether a conflict of interest exists or not is carried out on the basis of an objective standard, not a subjective standard. In other words, it does not matter whether the industry member feels there is a conflict of interest or whether the industry member feels he or she can act impartially. The test is whether a reasonable person would conclude the circumstances are such that the industry member’s judgment on behalf of, advice to, or loyalty to, the client could be adversely affected as a result of the circumstances giving rise to conflict of interest.

When an industry member is in any agency relationship (e.g. representing a property owner) they have significant fiduciary duties to their clients. These include the duty of undivided loyalty to the client, including acting in the best interests of the client at all times, and the duty to avoid all conflicts of interest. Further as a general rule, any industry member who is providing professional services to a client whether in agency or not has the same obligations to avoid placing themselves in a situation where they are in a conflict of interest.

Section 41(f) of the *Real Estate Act Rules* requires an industry member to disclose any conflict of interest “at the earliest practical opportunity.” This should be taken to mean immediately, or the first opportunity, upon learning of the existence of the conflict.

Disclosure of the conflict of interest means full disclosure; that is, all of the details known to the industry member must be provided to the client. The industry member should fully explain why they believe they are in a conflict of interest and how this affects their client.

Once this information has been provided, it is the client's decision as to how to proceed in the face of the conflict. Section 54(3) of the *Real Estate Act* Rules provides that an industry member can not provide any services to the client in which the industry member has or will have a conflict of interest without receiving the written and informed consent of the client. The client should be advised to obtain independent advice concerning the conflict. This independent advice may come from another industry member (not associated with the same firm or brokerage) or a lawyer.

Conflicts of Interest in Property Management

Though some conflicts of interest encountered in property management may be very similar to those found in residential real estate transactions, others may be unique. For instance, imagine that, as a property manager, you manage a large rental complex owned by a large corporation. Your job, among other things, is to hire third-party service providers for the rental complex, including landscapers, snow removers, etc. What happens if you are put in a conflict of interest position vis a vis one of the companies you wish to hire as a service provider for the rental complex? Remember it would be a conflict of interest if, for instance, the snow removal company hired by you for your client is owned by your brother. Or, if you and another relative own a company and it is hired to do the landscaping for the rental complex.

If, as a property manager, you want a related company or individual, for example, to provide services to your owner/client, you must first disclose the relationship that has or will put you in a conflict of interest. Your client and the law anticipates that you will hire the best service provider for the job (best and right price for best and right services). You, however, may want to give as much business as possible to the related individuals or companies and you may believe this objective meets the best interests of your client.

Once you have disclosed the conflict of interest, you need to obtain the informed, written consent from your client for those related individuals or companies to provide the services in question. In order for it to be considered "informed" written consent, you must explain the advantages and disadvantages of using the service provider in question. The explanation should include a discussion on how it will be handled down the road should conflicts arise with the service provider (for example, if the property owners are not happy with the prices being charged or the quality of service being provided).

And, if not expressly spelled out in the management agreement, you should obtain quotations from other service providers for the property owners' review prior to contracting with the related service providers. You do not want the property owner(s) to come to you with a complaint that the related service providers were priced unreasonably high for their services as the conflict of interest could be raised as an issue.

In brief, without disclosure and client written and informed consent to your actions in a conflict of interest situation, you may be viewed as acting in your own best interests and not those of your client.

Practice Tips

When a conflict of interest situation arises, disclose it immediately, get informed written consent from your client to proceed and, if practicable, provide other options to your client in order to avoid the conflict in the first place. If appropriate consent is not present do not proceed.

In RECA's view, it is not enough to set out in the management agreement that you as property manager may contract with related individuals or entities for the provision of services to the property owner(s). You cannot obtain blanket general approval for consent to a conflict of interest through such an agreement. Rather, you must disclose the conflict of interest to the client in each circumstance and obtain the appropriate written and informed consent each and every time a conflict of interest arises.

If your client has given you approval to use a related company for the provision of specific service in one instance, should you wish to contract with that company for additional services for the client/owner, you again must disclose the conflict of interest to your client and obtain the client's informed written consent to proceed.