

*Lake Almanor Country Club*  
*Policy Manual*  
**Conflict of Interest Policy**

Policy Manual Section: Board

Policy Number: BD - 1

WHEREAS, The Lake Almanor Country Club (LACC) is a California nonprofit mutual benefit corporation duly organized and existing under the laws of the State of California; and

WHEREAS, Neither the California Nonprofit Mutual Benefit Corporation Law nor the Davis-Stirling Common Interest Development Act prohibit all transactions between property owner associations and their members, directors or officers, although both statutes set forth requirements for the independent approval of transactions between an association and directors and officers ; and

WHEREAS, There may be times and situations where taking advantage of a member, director or officer's expertise or connections may be to the advantage and in the best interest of the association; and

WHEREAS, The Board of Directors of LACC desires to manage and conduct the affairs of the association in a manner that is open and transparent, while being able to take advantage of the services and/or skills of members, directors and officers under appropriate circumstances.

NOW, THEREFORE, the Board of Directors does hereby adopt the following Conflict of Interest Policy.

**Disclosure**

Proposed transactions involving the Association and one or more Association Officials (see Exhibit A), are must be identified and disclosed in reasonable detail prior to any Board or community deliberations or action to approve or disapprove the Association's participation in the transaction.

**Approval Process**

Transactions between the Association and one or more Association Officials can be approved in one of two ways:

- A vote of the disinterested quorum of the Board of Directors.
- A vote of the Members of the Association.

**Use of Official Position**

Association Officials are prohibited from using their official position to gain an unfair advantage or promote their personal and/or business financial interests without prior full disclosure.

### **Post Disclosure and Evaluation Process**

This policy also endeavors to ensure that adequate safeguards are imposed on properly approved contracts and transactions with Association Officials by monitoring the progress of any approved contract or transaction involving the Association and one or more Association Officials on a regular basis, verifying compliance with any conditions imposed on the contract or transaction, and assessing the ultimate outcome of the contract or transaction. The goal of such an evaluation process is to determine whether an approved transaction involving an Association Official did, in fact, prove to be beneficial or advantageous to the Association and its Members as a whole.

### **Duty to Disclose Potential Conflicts of Interest**

An Association Official who is proposing or considering proposing that the Association engage in a Conflict of Interest Transaction with that Association Official has an affirmative duty to disclose to the Association's Board of Directors, in reasonable detail and in writing, any Financial Interest of the Association Official who will participate in, and/or benefit from the contract or transaction. Reference is also made to Corporations Code section 7233 which required full disclosure of the material facts regarding contracts or transactions in which a director has a Material Financial Interest. The determination of whether a potential Conflict of Interest exists is not a determination that is to be made by the interested Association Official if the Financial Interest constitutes a "Material Financial Interest" as defined in Exhibit "A". Instead, that is a decision for the disinterested members of the Board of Directors to make, given all of the facts and circumstances related thereto, at a meeting that is open to attendance by the Members, unless upon advice of the Association's legal counsel, it is determined that the decision should be made in executive session and the executive session is otherwise permissible under the Open Meeting Rules of the Davis-Stirling Common Interest Development Act (Civil Code section 4935).

### **General Prohibition on Participation by Association Officials and Members in Transactions Involving Conflicts Of Interest**

Except as otherwise provided below, no Association Official shall make, participate in making, or in any way attempt to use his/her official position to influence a Decision of the Board with respect to any transaction or decision in which the Association Official knows or has reason to know that he/she has a direct or indirect Material Financial Interest. In addition, the Board of Directors shall not make a final Decision of the Board that will cause the Association to become engaged in, or a party to, any contract or transaction in which an Association Official has a Material Financial Interest unless the contract or transaction is approved in accordance with the section below.

Also in accordance with Civil Code section 5350(b) and this Conflict of Interest Policy, an Association Official is prohibited from voting, in his/her capacity as an Association Official, on any of the following matters:

- Discipline of the Association Official;
- Levy of an assessment against the Association Official for damage to the Association's Common Areas or Common Facilities or the Association Official's Unit;
- A request, by the Association Official for a payment plan for overdue assessment obligations to the Association;

- A decision whether to foreclose on a lien on a Lot of the Association Official;
- Review of a proposed physical change to the separate interest of the Association Official;
- In addition to the foregoing decisions or actions that an Association Official must refrain from voting upon, no Association Official shall use his/her status as an Association Official or his/her access to Association information, including, without limitation, the Association's membership list, to promote or to further a Financial Interest of the Association Official. It is specifically noted that improper use of the Association's membership list for commercial purposes is a violation of the Corporations Code section 8338(a) and Civil Code section 5230(a).

### **Approved Conflict of Interest Transactions**

Conflict of Interest Transactions between an Association Official and the Association may nevertheless be authorized in either of the following ways;

- Approval by a Vote of the Members – The Conflict of Interest Transaction may be approved by a vote of the general membership when the material facts of the contract or transaction involving the Material Financial Interest of the Association Official are fully disclosed or known to and approved in good faith by the Members of the Association;
- Approval by a Vote of a Disinterested Board – The Conflict of Interest Transaction may be approved by the Board of Directors when: (1) the material facts of the contract or transaction and the interest of the Association Official in the contract or transaction are fully disclosed to or known by the Board of Directors; and (2) the Board approves the contract or transaction in advance of its implementation in good faith by a vote sufficient without counting the vote of the interested Association Official and the contract or transaction is just and reasonable with respect to the Association at the time it is authorized or approved. Any approval of a Conflict of Interest Transaction pursuant to this section shall only be made at an open meeting of the Board of Directors (can be done in executive session on the advice of legal counsel) and the proposed approval of the transaction is noted in the agenda for the meeting.

Regardless of how the Conflict of Interest Transaction is approved, the following must be included:

- A full disclosure of the terms and conditions of the contract or transaction.
- If requested by the Board, written reports and updates regarding actions taken and total costs paid during the term of the contract or transaction.

### **Attendance by Interested Association Official, Members or Immediate Family Members at Meetings at which Actions are being Considered Regarding Conflict of Interest Transactions**

The Association Official who is the subject of a contract or transaction with the Association that may involve a Material Financial Interest of the Association Official shall not be precluded from attending the Board or Membership meeting at which the proposal is on the agenda for discussion and possible approval or from being counted in determining the presence of a quorum at a meeting of the Board or a committee of the Board, so long as the Association Official makes himself/herself available for questioning (prior to any vote being conducted on the proposal) regarding the terms and the merits of the proposed contract or transaction.

This section of the Policy recognizes that input and information from the interested Association Official regarding the nature of the contract or transaction and its benefits to the Association, may contribute to a more informed Decision of the Board. Nothing in this section shall preclude the Board from requesting that the interested Association Official exit the meeting after this presentation is made.

### **Employees Negotiating Compensation**

The provisions and restrictions imposed by this Conflict of Interest Policy shall not apply to an employee or independent contractor of the Association when negotiating with the Board of Directors regarding compensation or terms of employment or engagement.

### **Disclosure Statement**

On or before November 1 of each year, each member of the Association Board or Directors shall complete and present to the Association a Financial Conflict Disclosure (Exhibit B). These annual disclosure statements shall be included in the corporate minutes and shall be open for inspection by the Members.

### **Amendments to Disclosure Statement**

A Director of the Association Board shall file an amendment to his/her Financial Conflict Disclosure statement within ten (10) days of changes to the information contained in the Financial Conflict Disclosure statement.

### **Enforcement**

In the event it comes to the attention of the Board of Directors that a Conflict of Interest Transaction has transpired without being approved in one of the ways described above, the interested Association Official shall be notified of the Board's finding and the alleged violation of this Policy shall be scheduled for a hearing and possible further action in accordance with Civil Code sections 5900 through 5920 (Internal Dispute Resolution) or 5925 through 5965 (Alternative Dispute Resolution). If the Board determines that a Conflict of Interest Transaction has taken place without proper prior disclosure and approval the Board may, by majority vote, refer the matter under discussion to a special committee of the Board, of which the Association Official with the Material Financial Interest is not a member. Violation of this Policy shall be grounds for removal of an Association Official from his/her office (subject to obligations in the governing documents for the Association) and/or adoption and publication to the general membership of a formal Resolution of Censure by the Board of Directors.

If a member of the Board of Directors fails to file a full and complete Financial Conflict Disclosure statement each year during his/her term of office, he/she may be removed from the Board of Directors in accordance with the Association governing documents.

**Candidates for Election to the Board of Directors**

Each candidate for election to the Board of Directors shall file a Financial Conflict Disclosure statement at the same time the candidate formally declares his/her candidacy and the Secretary of the Association shall be responsible for providing the General Manager and all incumbent officers and directors of the Association with a copy of the Financial Conflict Disclosure statement. Any Financial Conflict Disclosure statements shall be available for inspection by Members of the Association. No person's name shall appear on any ballot for election to the Board who fails to file a Financial Conflict Disclosure statement.

**Applicability**

The provisions of this Conflict of Interest Policy shall not apply to contracts or transactions entered into or proposed on the agenda for Association action on or before April 1, 2016.

**Board of Directors Approval Date: March 19, 2016**

**Conflict of Interest Policy**  
**EXHIBIT "A"**  
**DEFINED TERMS IN THE CONFLICT OF INTEREST POLICY**

**Defined Terms**

As used in the Conflict of Interest Policy, the following capitalized terms have the meanings ascribed below:

- **Affiliate** – shall be as defined in California Corporations Code section 150, namely any corporation or other Business Entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the other specified corporation or Business Entity.
- **Approved by the Members** – shall be the same as contained in the California Mutual Benefit Corporation Law (Corporations Code section 5034), namely that the proposed contract or transaction is approved by the affirmative vote of a majority of a quorum of the Association’s Members conducted at a meeting or by written ballot (as outlined in the Association’s governing documents), without counting the vote of any interested Member. Whenever a vote of the Members is conducted, all Members shall be provided with the information outlined in the section entitled “Approved Conflict of Interest Transactions”.
- **Association Official** – a director and/or officer of the Association as well as an Immediate Family Member of a director and/or officer of the Association.
- **Business Entity** – means and refers to a trust, sole proprietorship, corporation, partnership, limited partnership, or limited liability company in which an Association Official/Immediate Family Members:
  - Holds a financial or equity interest of ten percent (10%) or more; or
  - Is an officer, director, managing member or trustee; or
  - Is employed as a licensed agent of a real estate brokerage company that lists properties in the Association.
  - Business Entity does not include ownership interests involving LACC Lots.
- **Conflict of Interest Transaction** – means and refers to either of the following:
  - Any contract or other transaction between the Association Official and the Association in which the Association Official has a direct or indirect Material Financial Interest; or
  - Any Decision of the Board that may result in the discipline of an Association Official; or
  - Any review of a proposed physical change to the Lot that is owned by an Association Official; or
  - Any request by an Association Official for a payment plan for overdue Assessments that are owing with respect to any Lot (s) that are owned by the Association Official; or
  - Any Decision of the Board to levy an Assessment against an Association Official to recover the cost of damage to the Common Areas or Common Facilities of the Association caused by the Association Official; or
  - Any Decision of the Board that may result in the indemnification of an Association Official by the Association; or

- Any Decision of the Board to pursue lien and foreclosure rights to collect delinquent assessments owing with respect to a Lot (s) that is owned by an Association Official; or
- Any litigation or dispute in which the Association is or may, in the opinion of the Association's legal counsel, become an adversarial party vis-à-vis the Association Official and the involvement of that Association Official in the litigation is other than as a result of being named as a party due to his/her official capacity or as an Association Member who is named on the same basis as other Association Members (NOTE: can this be simplified somehow?).
- **Decision of the Board** – includes any action by the Board of Directors of the Association at a duly called open meeting or executive session.
- **Financial Interest** – means and refers to any direct or indirect (through a business, investment or Immediate Family Member) financial interest of the Association Official in any of the following:
  - An ownership or investment interest (of 10% or more) in any Business Entity in which the Association has (or is contemplating entering into) a contract or transaction; or
  - A compensation arrangement involving payments by the Association to an Association Official (other than approved reimbursement for out-of-pocket expenses).
- **Immediate Family Member** – means and refers to a parent, sibling, child (by blood, adoption or marriage), spouse (both traditional as well as spousal-like relationships), grandparent or grandchild of an Association Official.
- **Member** – means and refers to any owner of a fee simple interest in a Lot within the Lake Almanor Country Club (including a trustee of a trust or officer/director of a business entity).

**Conflict of Interest Policy**  
**EXHIBIT "B"**  
**FINANCIAL CONFLICT DISCLOSURE**

I, \_\_\_\_\_, do hereby acknowledge that I am a duly elected member of the Board of Directors for Lake Almanor Country Club, a California nonprofit mutual benefit corporation ("Association"). I acknowledge that as a member of the Board of Directors I have certain fiduciary obligations and responsibilities to the Association and its Members to act in the best interests of the Association; taking into consideration what I believe to be the best interests of all its Members. These obligations that I have as a director include, but are not limited to, a duty to exercise proper care, skill and diligence in the discharge of my duties, to avoid conflicts of interest and avoid the furtherance of my personal interests.

I wish to confirm that during the last 12 months I have received \$\_\_\_\_\_ dollars from the Association. I wish to further confirm that corporations, legal entities, or fictitious entities with whom I (or an Immediate Family Member of mine) have an ownership interest (other than in the form of publicly traded stock) have received \$\_\_\_\_\_ Dollars from the Association over the last 12 months.

I wish to confirm that all monies received by me (or my Immediate Family Member) have been supported by expense reports and/or invoices duly approved by the Association and I affirm that I have received no other monies and have not profited from any contract or work performed by or with the Association, except as detailed below:

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I swear and affirm that the above representations are true and accurate to the best of my belief.

DATED: \_\_\_\_\_, 20\_\_\_\_\_.

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Signature of Board Member