

## PAGOSA LAKES PROPERTY OWNERS' ASSOCIATION

### CONFLICT OF INTEREST POLICY AND CODE OF CONDUCT AND ETHICS FOR BOARD MEMBERS

#### Definitions:

- (i) "Director" means a member of the Association's Board of Directors.
- (ii) "Party related to a Director" means a spouse, a descendent, an ancestor, a sibling, the spouse or descendant of a sibling, an estate or trust in which the Director or a party related to a Director has a beneficial interest, or an entity in which a party related to a Director is a director or officer or has a financial or other interest.
- (iii) "Conflicting interest transaction" means a contract, transaction, or other financial relationship between the Association and a Director, or between the Association and a party related to a director, or between the Association and an entity in which a Director of the Association is a director or officer or has a financial interest.
- {iv) "Non-financial conflict of interest" means a business, employment or personal relationship with a third party that impairs a Director's impartiality or ability to act in the Association's best interests.
- {v) "Indirect financial conflict of interest" means a business, employment or personal relationship in which there is no direct financial transaction with the Association, but in which the Director is unable to be impartial or act in the Association's best interests.

- I. No Director will use his/her position as a Director for private gain.
  - A. No Director will solicit or accept, directly or indirectly any gifts, gratuity, favor, entertainment, loan, or any other things of monetary value from a person who is seeking to obtain contractual or other business or financial relations with the Pagosa Lakes Property Owners Association.
  - B. No Director will accept a gift or favor made with intent of influencing decision or action on any official matter.
  - C. Except as set forth below, a Director who is also engaged in the practice of another profession will not perform such other services for the Association while serving as a Director, if the performance of such services is likely to result in a perceived or real conflict of interest.
  - D. No loans shall be made by the Association to its Directors or officers. Any Director or officer who assents to or participates in the making of any such loan shall be liable to the Association for the amount of the loan until it is repaid.
  - E. No Director will receive any compensation from the Association for acting as a Director.
  - F. No Director, or employee of a Director, may use his position to enhance his own financial status through recommendation of vendors, suppliers, or contractors that may pay a gratuity, commission or any type of fee to the Directors or the Director's employees.

## II. **Procedure When a Conflict May Exist**

### A. **Disclosure**

A Director must disclose any known conflicting interest transaction, non-financial conflict of interest or indirect financial conflict of interest, to the other Directors in open session at the first open meeting of the Board of Directors at which the interested Director is present. The disclosure must occur prior to any discussion or vote on the matter.

- I. If another Director, PLPOA owner, or employee of PLPOA asserts to the Board of Directors that there may be a conflict of interest that has not been disclosed, the Board of Directors may consider the information provided, notify the Director of the asserted conflict and allow opportunity for response, and determine whether the assertion is justified to conduct a vote by the disinterested Directors to determine whether a conflict may exist. By vote of a super-majority (one vote more than a majority of disinterested Director(s)) that a conflict may exist, the Board of Directors may proceed as though the Director(s) in question had disclosed a conflict.

### B. **Interested Director Participation in Discussion**

After disclosure, the Director will not participate in the discussion unless a majority of the disinterested Directors ask the interested director to remain during the discussion and/or vote. Otherwise, the interested Director will leave the room.

### C. Voting

In any decision where a conflict is known to exist, the interested Director shall not be entitled to vote. Any interested Director will still count for the purpose of establishing quorum.

The contract, Board decision or other Board action must be approved by a majority of all the disinterested Directors. No contract, Board decision or other Board action in which a Director has a conflict of interest will be approved unless it is commercially reasonable to and/or in the Association's best interests.

No conflicting interest transaction, or transaction involving a non-financial conflict of interest or indirect financial conflict of interest, will be set aside solely because an interested Director is present at, participates in or votes at a Board meeting that authorizes, approves or ratifies the conflicting interest transaction if:

- (i) the material fact as to the Director's relationship or interest as to the conflicting interest transaction, non-financial conflict of interest or indirect financial conflict of interest are disclosed or known to the Board, and the Board in good faith authorizes, approves, or ratifies the conflicting interest transaction or other decision by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors may be less than a quorum; or
- (ii) the material facts as to the Director's relationship or interest and as to the conflicting interest transaction, non-financial conflict of interest or indirect financial conflict of interest are disclosed or known to the Members entitled to vote on the transaction, if any, and the conflicting interest transaction is specifically authorized, approved or ratified in good faith by a vote of the Members entitled to vote; or
- (iii) the conflicting interest transaction or other decision is fair to the Association.

### D. Meeting Minutes

The minutes of the meeting shall reflect the disclosure made and record who voted for and against. The rationale for approving a disclosed Conflict of Interest Transaction or other conflict must be clearly stated in the meeting minutes.

## III. Specific Guidance and Restrictions

### A. Sale or Transfer of PLPOA Owned Property

PLPOA owned properties of any kind including owned real estate or that which is in process of, or under threat of, acquisition by PLPOA for delinquent dues or other reasons, may not be purchased by PLPOA Directors, their immediate families and/or their families or agents. (From Resolution 1999-01)

Property, including vehicles, other than those used as trade-ins or for salvage, will be advertised for sale by minimum sealed bid in the local paper or in the PLPOA Newsletter. FURTHER, the minimum acceptable bid amount will be determined jointly by the General Manager and Treasurer. The proceeds of the sale of all properties shall be immediately deposited to the appropriate PLPOA account and proper entries made in the books of the Association. (From

Resolution 1999-16)

In the event a property is deemed, by the Board of Directors, to be one not typically utilized by the general public, or has limited use, or has a restricted buyer base or is specialized in nature, the Board of Directors may specify that the property be sold at a price based on an appraised value, or value established by an expert in the matter of the property or, a value published in a recognized market publication, or as determined by the Association Treasurer and General Manager. The proceeds of the sale of all properties shall be immediately deposited to the appropriate PLPOA account and proper entries made in the books of the Association. In the event, a property of the Association cannot be sold due to governmental restrictions placed upon the sale of such an item, including, but not limited to, certain firearms, the Association will cause the destruction of that item through governmentally imposed processes. (From Resolution 2000-09)

**B. Indirect Financial Conflict of Interest**

Directors who believe they may have personal or business interests or who are associated with an organization (formal or informal) that has special interests, where that interest comes before the Board, must disclose the interest or relationship whenever the Board considers a contract or other action affecting that interest, organization, or relationship.

**C. Non-Financial Conflict of Interest**

Directors must disclose personal or business relationships, including any past or present friendships or conflicts, with parties who come before the Board for a decision.

**D. Existing Services or Contracts**

Services or contracts that are in place prior to a Director having been elected or appointed to the Board may remain in place. Upon modification or renewal of the contract or services agreement, competitive bids should be solicited. The modification or renewal must be treated as a Conflicting Interest Transaction.

**E. Director Use of PLPOA Owned Properties**

A Director performing work for the benefit of the Association may make incidental use of Association properties to perform tasks related to their work as a Director. By way of illustration and not meant as a limitation, a Director may use Association vehicles to conduct property inspections and Association office equipment or software licenses to perform administrative tasks.

## Code of Conduct and Ethics

It is recognized that many clients, vendors, and suppliers consider reasonable gifts and entertainment as an accepted business practice without any intent to unduly influence the judgment of the Board of Directors. Nevertheless, it will be the policy of the Board of Directors to discourage the acceptance by its members of gifts, entertainment, or other favors from existing or prospective clients, vendors, or suppliers.

Cash gifts of any amount are unacceptable. Gifts of a nominal value and personal nature given as a token of friendship or special occasions such as Christmas, a job promotion, or length-of-service award are acceptable. Any gift, entertainment, or other favor is not acceptable.

A Director will undertake only those responsibilities and assignments that he/she can reasonably expect to perform adequately.

A Director will adequately plan for the functions for the Association including review of all materials pertinent to the Board meetings and other functions of the Board of Directors.

No Director will defame in any way any other Director or Association member or staff member while serving on the Board.

No Director will willingly or knowingly misrepresent facts to Association members for the purpose of advancing a personal cause or to place pressure on the Board to advance a Director's personal cause.

No Director will use his/her Board position to make threats of actions against Owners in regards to Association Rules and Regulations. All such matters are to be handled in the normal manner through the Association Staff.

No Director will seek to have a contract implemented that has not been duly approved by the Board.

No Director will interfere with a contractor implementing a contract in progress. All communications with contractors will go through management. Professional courtesy will include and should not interfere with, among other things, contractual relationships between Association management professionals and contractors.

No Director will interfere with the system of management established by the Board and management. A Director will comply with all operating standards (internal operating procedures) that are in force or may from time to time be promulgated by the Board of Directors and management.

No Director may use any funds being held for Association business for personal use.

No Director will interfere with the duties of any staff member of the Association. ALL Directors will exhibit professional courtesy to all Association management professionals.

No Director will harass, threaten, or attempt through any means to control or install fear in a member of the staff.

In addition to a Director being prohibited from using his/her position to make threats to Owners

or to staff, a Director is also prohibited from making promises to those parties.

It is expected that all members of the Board of Directors will make every effort to attend all regular, special and executive session board meetings.

Any Director who violates this code of conduct and ethics agrees that the Board of Directors may seek injunctive relief against him/her. The Director also agrees that the Board will be relieved of posting bond as a condition to its injunctive remedy.

## RECORD OF REVISIONS

93-11 – Establish Policy  
97-13 – Establish Policy  
99-1 – Establish Conflict of Disposition of Real Estate & Assets  
2005-13 – Establish Policy  
2006-16 – Update Policy  
2006-06 – Update Policy  
2017-09 – Update Policy  
2021-02 – Update Policy  
2021-20 – Update Policy  
2022-08 – Update Policy