

**Omaha Area Board of REALTORS®
Great Plains REALTORS® MLS
Leadership Roles and Responsibilities**

Self-Dealing and Conflicts of Interest

Directors are required to avoid conflicts of interest in their activities on behalf of the corporation and in their own dealings with the corporation. This duty covers transactions or events involving matters between the corporation and the director personally or the director's family; and matters between the corporation and any third-party entity in which the director or the director's family is a director, officer, legal representative, or has a material financial interest. For example, it would be a conflict of interest for the director to participate in or vote upon a transaction where the corporation was contracting with an entity as a vendor to the corporation and the director or a family member was a part owner of the vendor.

It would also be self-dealing and a breach of the director's duty of loyalty to usurp a corporate opportunity by using confidential information gained as a director to profit personally at the expense of the corporation. A director may not personally engage in a business transaction that the corporation could have conducted for its own benefit. For example, if the director learned of a corporate decision to purchase land for expansion and then arranged for prior purchase of the target land by the director's spouse (or other third party) in an attempt to drive up the price of purchasing the land to the corporation (and thereby machining a personal profit), this would constitute prohibited self-dealing. The determination of whether a director has usurped a corporate opportunity to the detriment of the corporation is a fact-based inquiry which depends upon a number of factors, including whether the director took advantage of an opportunity belonging to the corporation and whether the corporation could have availed itself of the opportunity.

Transactions in which a director or a member of the director's family has self-interest are not strictly forbidden. These transactions are, however, voidable unless the interested director can show (1) that the transaction was fair and reasonable to the corporation; or (2) that the material facts of the transaction and director's interests were fully disclosed or known to the board of directors, and the board of directors (minus the vote of the interested director) approved the contract in good faith after such disclosure.

Confidentiality

This duty includes both confidential corporation business and information learned by the director as part of the corporation's business plan and any otherwise privileged communications between counsel for the corporation and the board of directors.

Directors for the association generally "wear two hats" since they serve as directors but also have (or are affiliated with) private real estate firms and are members in the association through that affiliation. Nonetheless, as fiduciary agents of the association, directors are obligated to maintain the confidentiality of corporation business and other information learned as a director as well as attorney-client communications received in their role as directors.