



MEMORANDUM

TO: Bristol Harbour Village Association, Inc.
Attn.: Mark J. Moretti, Esq.

FROM: Kelley Ross Brown, Esq.

RE: Conflicts of Interest

FILE #: BR395.114724

DATE: October 16, 2019

We have been requested by the Board to review concerns regarding conflicts of interest as they apply to members of the Board of Directors. Bristol Harbour Village Association, Inc. ("BHVA") is a non-charitable, not-for-profit corporation formed under New York State Law, and as such, is subject to the updated amendments to the Not-For-Profit Corporation Law which became effective in May, 2017. The changes in the law resulted in the requirement that all not-for-profit corporations must adopt a conflict of interest policy. BHVA does not have a separate conflict of interest policy. We have provided a proposed policy to the Board that complies with the statute and recommended that it be adopted by the Board of Directors at their earliest opportunity.

All directors elected have a fiduciary obligation to BHVA. The Bylaws provide in Section 3.10 that any director who "has a personal interest in any entity with which the Association is contemplating a contract or other transaction shall disclose such interest to the Board of Directions, and shall not participate in deliberations, be counted in determining a quorum, or be entitled to vote on such contract or transaction." This section further states that any failure to disclose such a personal interest to the Board can be grounds for removal as a director or as an officer. So long as the conflict is disclosed and/or is otherwise known by the Board, and the appropriate measures noted above are taken, the existence of a conflict alone does not prohibit an Owner from serving as a member of the Board. Depending upon the pervasiveness of the conflict, however, it may be cumbersome for the Board member to meaningfully participate in matters that come before the Board and for the Board to ensure that the appropriate precautions are taken.

