

ASK THE CITY ETHICIST

Real Estate Ownership for City Employees

By
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Question: *I heard that the City of New York's conflicts of interest law prohibits City employees, like myself, from doing business with any City agency. I own a 2-family residential property in the City. I live on the first floor and rent out the second. I pay the City's Department of Finance for my property taxes and pay the City's Department of Environmental Protection for water and sewer utilities. Am I also going to have to pay the City's Conflicts of Interest Board for violating the conflicts law?*



Answer: You're right that the City's conflicts of interest law prohibits the City's full time public servants from doing business with any City agency. But, don't worry. From what you've said, it sounds like you're on the right side of the conflicts of interest law. Which is a good thing, since the maximum fine the Conflicts of Interest Board (COIB) can impose recently went up to \$25,000 for each violation.

It's commonly understood that business dealings are transactions with the City involving the sale, purchase, rental, or exchange of any goods, services, or property and any license, permit, grant or benefit issued by the City. Lesser known, is that the definition of "business dealings with the City" explicitly excludes any transaction involving a public servant's residence. Moreover, COIB has determined that owning real estate, without more, does not constitute business dealings with the City. You live in the home you own. So, your ownership interest is subject to the residence exception of the conflicts of interest law, provided you don't do anything more than every other private residential property owner in the five boroughs, like pay property taxes and a water and sewer bill.

What "more" would a public servant have to do to break out of the safe harbor? The above referenced law more precisely restricts full time City employees and officials from having an ownership interest (or a position) in a firm that is engaged in business dealings with any City agency. Like most people, you consider yourself the king of your castle, not the CEO of your firm. Be that as it may, COIB has determined that a firm includes an individual seeking business on his own behalf. For example, let's say the City pays you rent for your second floor apartment. This would constitute you seeking business with the City and, thus, "more" than merely owning real estate in the City.

The above example isn't quite as uncommon as you might think. Every month, the City cuts rent checks to landlords throughout the City who rent apartments to recipients of public assistance or federal Section 8 funds. But the COIB has said that, generally, it is ok for City employees to rent apartments they own to recipients of public assistance and Section 8 with two provisions. First, the rental property must have fewer than eight units. Second, the City employee cannot work in the unit or division of the City agency administering their tenant's rent subsidies (you know who you are HRA, HPD and NYCHA employees) without obtaining their agency's approval.

Since we're on the topic of tenants, don't rent your second floor to anyone at your City job who is your superior *or* your subordinate. The reason is that the conflicts of interest law does not allow any type of business or financial relationship between superiors and subordinates.

If you have any doubt at all about whether your action would create a conflict of interest, call COIB at 212-442-1400 and ask for the "attorney of the day." You can also e-mail us through our website (<http://www.nyc.gov/ethics>) by clicking on "Contact COIB." All calls and e-mails are confidential, and you may contact us anonymously. You should also ask your agency's personnel or counsel's office about your own agency's rules, which may be stricter than the COIB rules.

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