

*Ethics lights the way
to good government*

The Ethical Times

A Publication of the New York City Conflicts of Interest Board

Phil Weitzmann, Editor



Real Estate Ownership for City Employees

By
Bre Injeski

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 two-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 personal 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 general counsel's office about your own agency's rules, which may be stricter than the COIB rules.□

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Recent Enforcement Cases

▶ The Board and ACS concluded a three-way settlement with an ACS Child Protective Specialist who was suspended by ACS for three days without pay, valued at \$571, for using ACS letterhead to send a letter to the New York City Department of Homeless Services requesting that her daughter's friend, who had been living with her, be provided with housing through the DHS Prevention Assistance and Temporary Housing Program.

▶ The Board and DOHMH reached a three-way settlement with a Computer Service Technician in the DOHMH Technology Services Bureau, who agreed to irrevocably resign from DOHMH for using City resources to perform work related to the private ministry that he headed, and for other conduct that violated DOHMH standards but not the Conflicts of Interest Law.

▶ The Board and DOE concluded joint settlements with three P.S. 203 employees, fining a teacher \$2,250, and a parent coordinator and the principal \$1,500 each, for ducking the DOE's student enrollment rules to enroll the teacher's daughter in P.S. 203.

▶ The Board concluded a settlement with a Technical Inspector for SCA who paid a \$1,500 fine to the Board for obtaining work permits for his private clients from the New York City Department of Buildings.

▶ The Board and NYCHA concluded a three-way settlement with a Housing Assistant who was suspended for 15 days without pay, valued at \$3,082, for using City resources to do work for his private tax preparation and immigration business.

▶ The Board and HPD concluded a three-way settlement with an Associate Staff Analyst who agreed to irrevocably resign from HPD for acting as a landlord to her subordinate.

▶ The Board fined a former DOE School Secretary \$14,000 for using school spending accounts for personal purchases and giving a school laptop to her granddaughter for a week.

▶ The Board issued a public warning letter to a former Commanding Officer at the NYPD Office of Labor Relations who, after retiring from the NYPD, was retained as an expert witness in a lawsuit against the City, in which lawsuit he had personally and substantially participated while at the NYPD.

▶ The Board issued a public warning letter to an ACS Social Services Supervisor who self-reported to the Board that, since 1967, she had been an unpaid board member of a not-for-profit organization engaged in business dealings with ACS and that, for approximately 1½ yrs, she had been employed teaching a class at a firm doing business with ACS.

▶ The Board issued a public warning letter to a former public servant who had used his position as the Director of the DEP Collections Division to hire his sibling for an entry-level position in that DEP division.

▶ The Board and DOHMH concluded a three-way settlement with a DOHMH Associate Staff Analyst, who was suspended for 30 work days, valued at \$7,303.96, for accessing the City's Payroll Management System to obtain salary information about a DOHMH employee to provide to her friend, who was applying for a similar job.

▶ The Board and DOHMH concluded a three-way settlement, involving a variety of penalties with a total financial value of \$12,988.40, with an Associate Public Health Sanitarian at DOHMH for using his City computer and e-mail on behalf of his private entertainment business.

▶ The Board and ACS concluded a three-way settlement with an ACS Community Coordinator who was suspended by ACS for forty-five calendar days without pay, valued at \$9,079, and placed on one-year probation, for using his City computer to do work for his private financial services business.

▶ The Board imposed, and then forgave based on demonstrated financial hardship, a \$1,500 fine on a former HPD Secretary who communicated with HPD on behalf of her

private client within one year of her termination from HPD.

▶ The Board and FDNY concluded a three-way settlement with the former Chief of Operations for EMS at FDNY who paid a \$12,500 fine to the Board for obtaining a paid position with a firm he was dealing with in his official capacity.

▶ The Board fined the Special Assistant to the Executive Director at an HHC facility \$2,000 for using City resources on behalf of her private travel agency, despite having requested and received a written opinion from the Board warning her against this conduct.

▶ The Board concluded a settlement with a DOE School Aide, who was suspended for two weeks, valued at \$848.40, for soliciting parents at her school to enroll their children in an after-school program run by the School Aide's sister.

▶ The Board fined the Brooklyn Borough President \$2,000 and his Chief of Staff \$1,100 for the legal representation provided by the Chief of Staff and his law firm to the Borough President in connection with the Borough President's purchase of a house.

▶ The Board and HRA concluded a three-way settlement with an HRA Job Opportunity Specialist who agreed to be suspended for 60 days without pay, valued at \$6,972, for accessing the Welfare Management System to view the public assistance records of her nephew and tenant for her personal use.

▶ The Board and HRA concluded a three-way settlement with an HRA Clerical Associate who agreed to be suspended for 30 days without pay, valued at \$3,695, for accessing the Welfare Management System to view the public assistance records of her daughter for her personal use.

▶ The Board and DOE reached a three-way settlement with a DOE Secretary, fining her \$7,500 for using a DOE computer during her DOE work hours to perform work related to her private real estate business.

▶ The Board fined a former Tobacco Media Manager for DOHMH \$1,500 for appearing before DOHMH on behalf of private interests during his first year of post-City employment.

▶ The Board fined the Director of Field Operations for the New York City Board of Correction \$4,000 for using his City position to circumvent DOC procedures to expedite and accommodate his incarcerated

nephew's after-hours request to attend a funeral.

▶ The Board and DOE concluded a three-way settlement with an Assistant Principal who agreed to irrevocably resign from DOE for attempting to sell and selling pocket-books to her DOE subordinates and borrowing money from one of those subordinates.

▶ The Board fined the former Senior Associate Executive Director of an HHC facility \$3,500 for using agency letterhead and enlisting the assistance of two subordinates in creating home repair plans and submitting those plans to a state agency for review.

▶ The Board issued a public warning letter to a DOHMH Day Care Inspector who, while disputing an enforcement action taken by a state office against a day care facility owned by his mother-in-law, identified himself as a DOHMH Day Care Inspector.

▶ The Board fined a former Principal Administrative Associate at ACS \$3,000 for accepting a gift of five free tickets to a Broadway show from a firm doing business with ACS.

▶ The Board issued a public warning letter to a DOE School Aide who had a second job recruiting students at her school to attend a private summer camp for which she worked.□

Interested in more information?

Get in touch with COIB's Training & Education Unit to arrange a class in Chapter 68 for you and your staff.

Contact Alex Kipp, Director of Training, at

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A searchable index of all the COIB Enforcement Dispositions and Advisory Opinions is available courtesy of New York Law School here:

http://www.nyls.edu/centers/harlan_scholar_centers/center_for_new_york_city_law/citvadmin_library

