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## QUESTIONS & ANSWERS

### LEGAL Q & A

#### Boards and Contract Dealings

**Q** How about a board president who creates a landscape contract specifically designed for his brother-in-law so that no other company can bid on it? The cost is a difference overpayment of \$13,000 a year. This president also states in said contract that all owners and workers must be U.S. citizens with social security cards. Is that legal? -

-Concerned about Contracts

**A** "As a basic rule of operation, any director (or officer) in a condominium or homeowner association should be avoiding situations in which that director (or officer) will be receiving a benefit, either directly or indirectly, when negotiating contracts for the association," says Robert Kaye, managing member of the law firm of Kaye & Bender P.L. based in Fort Lauderdale. "The Florida Condominium Act (Chapter 718 of Florida Statutes), and the Homeowner Association Statutes (Chapter 720 F.S.) contain limitations on directors and officers having contractual dealings with their associations. Section 718.3026(3) F.S. requires that for any contract or other transaction between a condominium association and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers, or are financially interested, disclosure be provided to the association of the relationship. The minutes of the board meeting must contain the disclosure. The contract or other transaction must then receive the approval of not less than two-thirds of the directors who do not have an interest in the transaction, who are present at the meeting, with the interested directors or officers abstaining. Thereafter, the membership of the association has the opportunity to cancel the agreement at the next regular or spe-



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cial meeting. For a homeowner association, the issue is a bit less clear. Section 720.303(12) F.S. prohibits a director from in any way benefiting financially from service to the homeowner association. Whether or not a contract to a brother-in-law qualifies as such a benefit becomes a factual question. Disclosure of a potential conflict of interest is also required and the contract must be fair and reasonable at the time entered. The best method to use to protect the association from such a possibility would be to involve the entire board in the creation of specifications for contracts, so that no individual board member or officer has that type of control."