CONFLICT OF INTEREST LAW: REAL PROPERTY

Basic Rule

Under the Political Reform Act ("Act"), a public official has a disqualifying conflict of interest in a governmental decision if it is foreseeable that the decision will have a financial impact on his or her personal finances or other financial interests. In such cases, there is a risk of biased decision-making that could sacrifice the public's interest in favor of the official's private financial interests. To avoid actual bias or the appearance of possible impropriety, the public official is prohibited from participating in the decision.

A public official has a disqualifying financial interest if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, directly on the public official's own personal finances and those of a member of his or her immediate family the official.

There are five types of "financial interests" that may result in disqualification:

- **Business Entity.** A business entity in which the official has an investment of $2,000 or more in which he or she is a director, officer, partner, trustee, employee, or manager.
- **Real Property.** Real property in which the official has an interest of $2,000 or more including leaseholds. (However, month-to-month leases are not considered real property interests.)
- **Income.** An individual or an entity from whom the official has received income or promised income aggregating to $500 or more in the previous 12 months, including the official's community property interest in the income of his or her spouse or registered domestic partner.
- **Gifts.** An individual or an entity from whom the official has received gifts aggregating to $500 or more in the previous 12 months.
- **Personal Finances.** The official's personal finances including his or her expenses, income, assets, or liabilities, as well as those of his or her immediate family.

To determine whether a public official has a prohibited conflict of interest, the official would need to apply the following review. The Fair Political Practices Commission can assist the public official in this review (*see* http://www.fppc.ca.gov/advice.html).

Step One: Is it reasonably foreseeable that the governmental decision will have a financial effect on any of the public official's financial interests? If the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable.

Step Two: Will the reasonably foreseeable financial effect be material? Property owned by the public official near the site under review may create a material financial effect.

Step Three: Can the public official demonstrate that the material financial effect on the public official's financial interest is indistinguishable from its effect on the public generally?

Step Four: If after applying the three step analysis and determining the public official has a conflict of interest, absent an exception, he or she may not make, participate in making, or in any way attempt to use his or her official position to influence the governmental decision.

The official would need to:

1. Publicly identify the financial interest that gives rise to the conflict of interest or potential conflict of interest in detail sufficient to be understood by the public, except that disclosure of the exact street address of a residence is not required.
2. Recuse himself or herself from discussing and voting on the matter.
3. Leave the room until after the discussion, vote, and any other disposition of the matter is concluded.