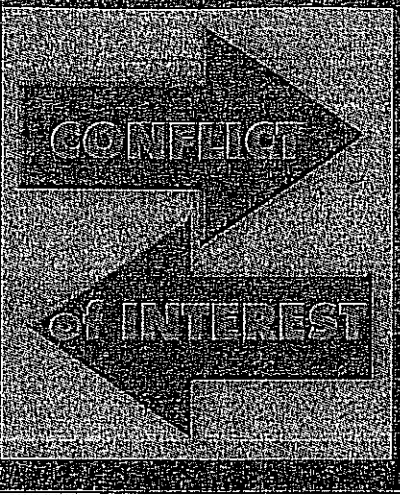


# HABITAT THE 2005 ATTORNEY SURVEY



CONFLICT  
of INTEREST

**IT'S A TRICKY SITUATION.** In addition to their daytime jobs, realtors, accountants, architects — and yes, even lawyers — all serve on co-op and condo boards. Inevitably, when making major decisions for the building, potential conflicts of interest can arise. How do you uncover them? How do you handle them? With those issues in mind, for our tenth annual survey, we asked:

**“When dealing with a co-op/condo board, what is an obvious (or less obvious) conflict of interest that you have encountered in the past 12 months? What were the potential consequences of the conflict and how did you advise your client to handle it?”**

After making certain their answers upheld the best interests of all parties, 27 attorneys from New York’s top law firms disclosed their wisdom to *Habitat*. Their responses follow.

## Schechter & Brucker

RESPONSE BY Andrew P. Brucker

TITLE Partner

**W**e have recently seen an increase in one particular type of co-op/condo conflict: a board member acting as a real estate agent in his/her building. The conflict is obvious. If a director earns a brokerage fee when a sale of a unit takes place, and the director has the right to vote on whether the board should consent to the sale (or waive its right of first refusal), a conflict exists. How can a director truly decide what is best for the housing company when his or her personal gain is at stake?

We recommend that a broker who intends to handle sales in the co-op in which he or she lives not sit on the board. However, we have learned from experience that this may not be practical. For example, many qualified shareholders who happened to be brokers might forego a position on the board. This is especially true in smaller buildings.

Nonetheless, we believe that this conflict cannot be ignored, and we recommend that boards create a conflict policy (to cover this and other conflicts). That policy should state that if a director acts as a broker on a sale, the director may not participate in any board discussion or in any vote taken on the matter. It is not enough that the broker does not take part in the vote. We believe that arguments made for consent by that director cannot be made in a neutral manner, with the well-being of the co-op primarily in mind, and therefore the broker should not even take part in the board discussions.