

**STATE ETHICS COMMISSION**  
**45 CALVERT STREET, 3RD FLOOR**  
**ANNAPOLIS, MARYLAND 21401**  
**410-260-7770 / 1-877-669-6085**

**April 11, 2014**

**TO: Prospective Appointees to Maryland Boards and Commissions**

**SUBJECT: Appointee Exemption Disclosure Form – Frequently Asked Questions and Sample Forms**

The following information is provided to assist a prospective member of a State board, commission, task force, work group, committee or similar entity in understanding and completing the Appointee Exemption Disclosure form. This form is the means by which a prospective board member can obtain an exemption for an existing conflict of interest. The questions and answers are designed to explain how the exemption applies and the steps that must be taken to obtain it. Additional questions should be directed to the staff of the Maryland State Ethics Commission at 410-260-7770. Note that while the term “board” is used throughout for simplicity, it is intended to include commissions, task forces and similar entities involving service with the State. Also, the term “Law” as used here refers to the Public Ethics Law.

### **Frequently Asked Questions**

**1. What is the purpose of the Appointee Exemption Disclosure form?**

Answer: To understand the form, it’s necessary to understand the employment and financial interest restrictions in the Law. The Law prohibits a member of a board from being employed by, or having a financial interest in, an entity that is regulated by that member’s board or that does business with, or seeks to do business with, that member’s board. The Law also prohibits a board member from having affiliations that would be incompatible with service on the board (see Question 7, below). As a general principle, if you have employment (including an unpaid management-level position in a professional organization) with, or a financial interest in, an entity that in some way has a connection to the board for which you are a candidate, you should assess the possibility of a conflict of interest.

If there does exist a conflict of interest, however remote, the Law provides a special exemption for a member of a board who would otherwise be prohibited from serving, if certain criteria are met and the proper steps are taken, including completion of the form.

**2. What is meant by the term, “financial interest”?**

Answer: The Law defines financial interest to include the "ownership of any interest as the result of which the owner has received, within the past three years, or is presently receiving, or in the future is entitled to receive, more than \$1,000 per year." The Commission has consistently held that the ability to sell an interest for in excess of \$1,000 brings that interest within the

definition. (See Opinion 85-23). The Law further defines financial interest as ownership of more than 3% of a business entity by a board member or the spouse of a board member, or ownership of securities of any kind that represent, or are convertible into, ownership of more than 3% of a business entity by the board member or the spouse of a board member.

3. **How does the exemption process work?**

Answer: The Law provides that a board member who has one of the conflicts identified in Question 1 can still serve on a board if: 1) the conflict exists at the time of the board member's appointment; and 2) it is publicly disclosed (by completing the form) to the appointing authority, the Ethics Commission and the Senate (if Senate confirmation is required). NOTE that this exemption ONLY applies to conflicts that exist at the time the appointment is made – it is not available to individuals who, subsequent to their appointment, acquire new conflicts that were not disclosed at the time of the appointment.

4. **Who is the appointing authority?**

Answer: The appointing authority is normally defined in the statute or executive order that creates the board. The appointing authority is the person charged with making appointments to the board. In many cases appointments are made by the Governor, and in those instances the process is handled by the Governor's Appointments Office (410-974-2611). In other cases the appointments are made by the secretary of the State agency where the board is located.

5. **What if I don't have any employment or financial interests that require an exemption?**

Answer: The form contains a block allowing you to check "No", indicating you do not request an exemption. At a minimum the Commission recommends you check that block and return the signed form to the appointing authority to indicate that you did consider the possibility of an exemption. However, since this exemption is only available to appointees at the time of their appointment, if you have any financial interests or employment situations that could even remotely be viewed as presenting a conflict, the best approach is to list them on the form, rather than missing out on this one time opportunity for an exemption.

6. **I don't have a conflict that exists at the time of my appointment, but I work for an organization that "may" apply in the future for a grant that is administered by my board. If I list this possible future conflict on my Appointee Exemption Disclosure form, will I be exempted in the event my organization does seek such a grant?**

Answer: No (except in a very limited circumstance discussed below). The time of appointment exemption is available "to a member of a board who holds the employment or financial interest **when appointed...**" A possible future relationship that would give rise to a conflict does not exist at the time of the appointment. Note, however, that in the Commission's Opinion 81-38, the Commission did slightly expand the interpretation of this exemption "to situations where no actual conflict exists at the time of appointment, but where past relationships and transactions raise a reasonable likelihood that there will be future similar dealings between the appointee's agency and a private employer." For example, the exemption would be available where an appointee to a board has an affiliation with a catering business that has had past dealings with the board and anticipates future dealings. Similarly, the exemption would be available to an appointee who worked for an organization that had previously received grants from the board and anticipates applying for future grants. However, absent a pre-existing relationship or

transaction, an anticipated conflict that does not exist at the time the appointment is made is not covered by the exemption.

7. **Subsequent to my appointment to my board, the statute creating the board was amended to expand the scope of the board’s regulatory authority. As a consequence, a business I own (and owned at the time of my appointment) now is in conflict with my duties on the board. I did not report it on my Appointee Exemption Disclosure form at the time of my appointment because at that time it did not present a conflict. Since this new conflict was not the result of any action on my part, can I now amend my form to add this conflict and continue to serve on the board?**

Answer: No. As discussed in Question 5, the time of appointment exemption is available only “to a member of a board who holds the employment or financial interest **when appointed...**” Regardless of the reasons for the new conflict (voluntary action by the board member or other causes not resulting from actions of the board member), if the conflict did not exist at the time of the appointment, this exemption does not apply (but see the answer to question 5 that addresses one narrow set of circumstances where the Commission has slightly expanded the scope of this exemption).

8. **I am a candidate for the Board of Morticians and Funeral Directors and I currently serve on the board of directors of the Maryland State Funeral Directors Association. Would such service be a conflict and if so, would I qualify for an exemption?**

Answer: Initially it is important to understand that volunteer service on a management or operational board of a private professional organization is viewed, for purposes of the Law, as employment and consequently, any such service must be analyzed as a possible conflict of interest. Note that the Commission has distinguished between simply being a dues-paying member of such an organization (not a conflict of interest), and participating in the management of that organization. Using the Board of Morticians and Funeral Directors as an example, persons who are appointed to this Board are charged with significant regulatory and licensing authority over individuals in the profession, with the objective of “policing” the profession. As the Commission noted in Opinion 87-01, a professional association (such as the Maryland State Funeral Directors Association) has a different role – to protect and advance the interest of the profession and its members. Often these roles may conflict, and the Commission observed that it is difficult for individuals to shift perspectives and carry out both functions in a manner that is impartial and demonstrative of independent judgment.

While an organization such as the Maryland State Funeral Directors Association may not be regulated by the Board of Morticians and Funeral Directors, and it may not do business with the Board, this type of dual service by a member of a State board would run afoul of the more general restriction in the Law that prohibits a board member from having affiliations that would be incompatible with service on the board. And unlike the other two restrictions that apply to situations where the outside position is regulated by or does business with the State board, the Commission has determined (Opinion 90-14) that dual service of the type raised in this question is prohibited and is not permissible even if the board member timely discloses it on an Appointee Exemption Disclosure form.

9. **In addition to the time of appointment exemption, are there other types of exemptions I should be aware of?**

Answer: The Law also provides for an exemption for persons who are appointed to a regulatory or licensing board if the statute creating the board requires that persons regulated by the board be appointed to it. For example, the State Board of Plumbing, which has authority to enforce the State Plumbing Code, is comprised (by statute) largely of plumbers. Without an exemption, plumbers could not serve on this board since they are regulated by it. However, because the statute creating this Board requires plumbers to serve, these persons are exempted by operation of law and do not need to request an exemption. The same holds true for dozens of boards that have a responsibility to regulate professions and businesses in the State. **NOTE** however, that while this particular exemption is different from the exemption available upon submission of the appointee exemption disclosure form, the Ethics Commission encourages all candidates for appointment to a board to complete the appointee exemption disclosure form and include all employment (including the employment that might be separately exempted) and any financial interests that could even remotely be viewed as presenting a conflict. See FAQ #5.

10. **If I submit an Appointee Exemption Disclosure form and obtain an exemption for a conflict of interest, does that mean I am no longer subject to the Law?**

Answer: No. The appointee exemption addressed here simply allows an individual who has a specific conflict to serve on a State board despite the existence of the conflict, provided the conditions as described above are satisfied. Such an individual remains subject to all provisions of the Law, and should be particularly mindful of the participation restrictions to avoid participating in any matter that comes before the board involving the exempted conflict of interest.

11. **I am being reappointed to a board on which I have served for the past 4 years. Do I have to submit another Appointee Exemption Disclosure form?**

Answer: Yes. Reappointment starts the process over again. Any exemption an individual may have received at the time of the original appointment concludes with the end of the individual's term on the board. Reappointment is the same in all respects as the original appointment, and conflicts that exist at the time of reappointment must again be disclosed in order to obtain the exemption.





