

December 16, 2014

Anamarie Avila Farias  
Councilmember  
City of Martinez  
525 Henrietta Street  
Martinez, CA 94553-2395

Re: Your Request for Advice  
**Our File No. A-14-212**

Dear Avila Farias:

This letter responds to your request for advice regarding your responsibilities as a Martinez City Councilmember the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup> Because the Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), this advice is based solely on the facts presented.

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

## QUESTIONS

1. Does the fact that you are the guarantor on a loan on property owned by your mother create an obligation to report your mother’s rental property on your Form 700?
2. Will your mother’s rental property be a basis for a disqualifying conflict of interest in considering projects near your mother’s home?

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

## CONCLUSIONS

1. No, you have no reportable interest in your mother's property.
2. No, your mother's property will not be a basis for a disqualifying conflict of interest under the Act.

## FACTS

You are a Martinez City Councilmember. Your mother, Anamaria B. Avila, owns a rental property in the City. When your mother purchased the property in 2008, she was unable to qualify for a loan to purchase the property. In order to assist your mother, you co-signed to guarantee the loan and appear as a debtor on the Deed of Trust. Your mother provided the down payment and has made the loan payments ever since. Your mother is the sole owner of the property and the grant deed shows that she holds title solely in her name.

Under your mother's will, the entire interest in the property will pass to your mother's grandchildren. You have no interest (recorded, unrecorded, or otherwise) in the home, and you have no ability to encumber, transfer or cause the transfer of the property.

## ANALYSIS

Section 82033 defines "interest in real property" to include any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family if the fair market value of the interest is \$2,000 or more. Interests in real property of an individual include a pro rata share of interests in real property of any business entity or trust in which the individual or immediate family owns, directly, indirectly or beneficially, a 10-percent interest or greater. An "indirect interest" means any investment in a business entity owned by the spouse of an official or by a member of the official's immediate family, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's immediate family, or their agents own directly, indirectly, or beneficially a 10-percent interest or greater. (Section 87103.) Section 82029 defines "immediate family" as "the spouse and dependent children."

Section 82033 defines "interest in real property" as "any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family if the fair market value of the interest is two thousand dollars (\$2,000) or more..."

You state that your mother owns a rental property in the City. Your mother is not a part of your immediate family. You also stated that you and your husband are on the "deed of trust" for the property as a guarantor and co-signer (co-borrower) but are not on the title of the

property. This security arrangement is also not considered an interest in real property.<sup>2</sup> For example, Fannie Mae, in their Selling Guide provides that guarantors and co-signers are credit applicants, but do not have ownership interest in the subject property. Guarantors and co-signers sign the mortgage or deed of trust note, have joint liability for the note with the borrower, but do not have an interest in the property sales transaction, such as the property seller, the builder, or the real estate broker.

Thus, neither your mother's ownership of the property nor your name on the deed of trust for the property create a reportable interest in real property for you as defined in the Act. Since you do not have an interest in the real property, the property will not be a basis of conflict of interest for you.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: John W. Wallace  
Assistant General Counsel  
Legal Division

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<sup>2</sup> In contrast, where an official holds a deed of trust on property as security for a loan the official made to the property holder as the lender, this would be an interest in the real property. (*Russell* Advice Letter, No. A-14-116a.)