

***What is the difference between recusal and abstention, if any?***

A very common mistake made by public board members is to equate recusal for conflict of interest with abstention. To *recuse* means “to disqualify ... from participation in a decision on grounds such as prejudice or personal involvement.” *American Heritage Dictionary*, 1143 (3d ed., 1997). To *abstain* means “to refrain from something by one’s own choice.” *Id.*

Recusal is the proper response to a conflict of interest. When a conflict of interest exists, a member of a deliberative body must recuse him or herself from all participation in the matter – including discussing, questioning, commenting and voting on the matter. Ideally, the person should leave the room so that there is no way that she or he can influence the procedure (for instance by smiles, glares or other body language). Where the Municipal Administrative Procedures Act applies, members must recuse themselves, as would members of the judiciary who are subject to the judicial conflict of interest law. 24 V.S.A. § 1203, 12 V.S.A. § 61.

In contrast, a board member should abstain from voting in a case in which he or she has inadequate information on which to judge the merits. This may occur where the member has not had the opportunity to examine all of the evidence or to attend all of the hearing for reasons other than conflict of interest. An individual may also abstain when he or she is simply unable to make a decision in the matter. In order for a board to take a binding vote or action, there must be the “concurrence of a majority of” the total number of board members. 1 V.S.A. § 172. The Vermont Supreme Court has held that the word “concurrence” in this context means more than silent acquiescence and requires expressed assent through a vote for the proposition. Thus, abstentions are not counted when determining whether a majority has concurred. *In re: Reynolds*, 170 Vt. 352 (2000).

Please also note that it is not necessary for a board member to stay away from an **entire** meeting because he or she has a conflict of interest or because he or she wishes to abstain. The member should plan to attend the meeting and participate in all other agenda items. The business of local government can still proceed in spite of conflicts and abstentions.

In summary, a recused board member should not participate in a hearing or deliberation concerning a matter in which he or she has a conflict of interest. The recused member should not be present, and is not counted as one of those present or as an abstention. A vote to abstain would come after a member has participated in the hearing and deliberation. However, that vote is not counted when determining whether there has been a concurrence of the majority of board members.

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