

Serving on the Board
Your Authority, Responsibility, Liability

Fiduciary duty is a legal relationship of confidence or trust between two or more parties

Authority - Most homeowner associations are non-profit corporations. Association directors have certain powers, duties and authority that are required in most cases by federal and state laws; local ordinances, and association documents. These may also extend to committee members. These powers usually include: amending bylaws and adopting rules; collecting assessments, adopting budgets, approving expenses and contracts; enforcing the covenants; imposing fines, and maintaining insurance. This list is not all inclusive. and requires that the directors follow due process when required.

Responsibility - Generally speaking, directors are expected to discharge their duties:

- In good faith;
- With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- In a manner the director reasonably believes to be in the best interests of the corporation.

Liability - Generally speaking, directors are not liable for any action taken as a director; or any failure to take any action, **if** they exercised proper fiduciary duty. Board members must be free to act in the interest of the members in order to run the association in the best way they see fit and to take appropriate risks. But corporate boards do need to be concerned about liability especially with regard to:

- **Duty of Care** - Boards have a duty of care to act in the best interest of the shareholders.
- **Duty of Loyalty** - Boards have a duty to avoid potential and actual conflicts of interest.
- **Personal vs. Corporate Assets** - Boards have a duty to avoid intermingling corporate and personal assets.

It is Best Practice for the Board to purchase Directors and Officers insurance (D&O) to protect themselves against lawsuits. The policy should extend coverage for actions of past boards.

Association Check-Up

The following are 10 performance measures to help determine the health of your homeowner association. In addition to self evaluation, the board may also want to encourage written and confidential participation by residents.

Simply score performance of each measure on a scale of one to ten. The results should guide the board and community to adopt measures that encourage improvement in management practices.

1. Manages the community according to the governing documents and in accordance with local ordinances, state and federal laws.
2. Maintains effective and consistent leadership through proper elections, volunteer appointments to committees and training.
3. Conducts meetings with notice, with agendas, with a quorum, in a timely manner and according to Robert's Rules (annual meeting, board and committee meetings).
4. Keeps assessment delinquencies to less than 5%.
5. Produces monthly financial reports, has financial fraud protection measures, and formally adopts a budget that avoids large annual increases in assessments.
6. Maintains adequate reserves and avoids special assessments.
7. Maintains all necessary insurance coverage.
8. Regularly conducts a site inspection to ensure compliance with the covenants which are fairly enforced with written notice, hearings and fines.
9. Has a maintenance program for common areas and other exterior responsibilities (such as painting, roofing, gutters, power washing, landscaping, etc usually found in townhome and condo communities). Awards contracts fairly according to specification, bid, award, inspection, and warranty process.
10. Keeps residents informed with: a new resident 'welcome package' (covenants, by laws, rules, forms, contact info, rights and responsibilities, etc.) using a website, email distribution list, and/or newsletter; and provides an opportunity for residents to address the board through a homeowner forum.

Code of Conduct for HOA Directors

No individual shall use his/her position as a Board member for private gain. No Board member shall solicit or accept, directly or indirectly, any gifts, gratuity, favor, entertainment, loan, or any other item of monetary value from a person who is seeking to obtain contractual or other business or financial relations with an Association.

No Board member shall receive any compensation from the association for acting as such.

No Board member shall engage in any writing, publishing, or speech making that defames any other member of the Association Board or resident of the association community.

No Board member will willingly misrepresent facts to the residents of the community for the sole purpose of advancing a personal cause or influencing the community to place pressure on the Board to advance a Board member's personal cause.

No Board member nor his/her agent or employee or family member shall enter into a personal service contract with the Association without previous disclosure of such interest to the Board.

No Board member will seek to have a contract implemented that has not been duly approved by the Board.

No Board member will interfere with a contractor implementing a contract in progress. All communications with contractors will go through management or be in accordance with policy.

No Board member will interfere with the system of management established by the Board and the management company.

Any Board member who violates this code of conduct agrees that the Board of Directors may seek injunctive relief against him/her and agrees to pay attorney's fees incurred by the Board in that enforcement effort.

Guide to Writing Minutes

*Minutes are a record of what was done at the meeting;
NOT what was said by members or guests.*

INCLUDE:

First Paragraph:

- Kind of meeting (regular, special, adjourned)
- Name of board
- Date and time of meeting
- Place of meeting, if it varies
- Fact that Chairman and Clerk were present or name of substitute
- Whether minutes of previous meeting were read and approved

Separate paragraph for each subject matter with name of mover:

- All main motions or motions to bring a main question again before the assembly (except any withdrawn, see below) stating
 - The wording in which adopted or disposed of
 - The disposition of motion (including amendments or motions)
- Secondary motions that were not lost or withdrawn
- All notices of motion
- All points of order and appeals, whether sustained or lost

Last Paragraph:

- Hour of adjournment

Number of votes if count ordered or ballot vote

Names and votes if roll call vote

Signature of Clerk (“Respectfully submitted” unnecessary)

DO NOT INCLUDE:

- The name of the person who seconds a motion
- Remarks of guest speakers
- Motions that were withdrawn
- Personal opinion on anything said or done

Tips for Better Meetings

Homeowner associations typically have different meeting types such as the annual meeting, board meetings, budget ratification meetings, and special called meetings.

Every association is different. Ensure that your association is in compliance with state laws and the governing documents. Consider:

- Required meeting dates and frequency.
- Timeframe and method of notifying members of meetings.
- Meetings in some states may be subject to “Open Meeting Laws”.
- Opportunities for residents to address the board. Usually this is an early agenda item (homeowners forum)
- Quorum, voting and proxy requirements
- Parliamentary Procedure and Roberts Rules of Order
- Minutes must be taken, approved, and recorded
- Use correct procedures if conference call meetings or electronic voting (email) are permitted.
- The board should meet in Executive Session when discussing personnel, delinquencies, and other sensitive issues.

Meeting Tips

- Consider adopting a Resolution for ‘Meeting Rules of Conduct’.
- A Best Practice is to distribute a ‘Board Meeting Package’ usually by email several days prior to the meeting. This usually includes an agenda, prior minutes, financial reports, and a manager’s report.
- Do not include items on the agenda that do not require action. Instead distribute in advance using a memo, e-mail or brief report.
- Follow the agenda and assign action items. Don't finish any discussion in the meeting without deciding how to act on it.
- A topic should be introduced by a motion and a second to ensure that it has merit. Discussion (with time limits) begins after the second. Refer to Roberts Rules of Order.

Voting and Proxies

What is a proxy? A proxy refers to a person who is given the authority to represent, vote and exercise the powers held by the homeowner. A proxy also refers to the signed document that grants the authority. A proxy vote is a vote cast on behalf of an absentee person.

Proxy votes are important. Since associations frequently have difficulty meeting a quorum because of poor turnout and/or absentee owners, proxies can be useful in establishing a quorum. A quorum is the minimum number of members necessary to conduct business. Proxies are also useful as a means of capturing enough votes to affect an election of officers or action on a motion.

The homeowner should be able to request a proxy form and instructions from the Association's Secretary or Management Company.

Proxy Requirements May Vary

- Proxies must be in writing and signed by the homeowner(s). Some associations or state laws may require that a disinterested party witness the signature.
- Only 1 proxy vote is allowed per lot; however, the governing documents typically provide differently for the declarant. (builder/developer).
- Proxies may need to be filed with the Association's Secretary.
- Proxies may be voted only in a member's absence.
- The duration of the proxy should be specific, such as one meeting or a period of time. Some states limit the period for which a proxy is valid.
- Proxies may not be transferred.
- Proxies may grant authority to vote as directed in writing on the proxy by the homeowner; or may grant authority for discretionary voting.
- The proxy should state that it is approved in form by the Board.

A meeting worksheet should be maintained by an officer of the association. The worksheet is used to list all eligible voting members, take attendance, record members represented by proxy, determine a quorum, and record the vote if by ballot. The worksheet should be maintained in the Minutes Book.

Parliamentary Procedure & Roberts Rules of Order

Running an association meeting by proper parliamentary procedure is smart for two reasons. First, it helps to avoid legal challenges to your actions; second, it produces better, more productive meetings. The conduct of business for an association often varies by size.

Annual meetings and meetings of large boards (more than 12) are typically formal in procedure. Some characteristics of parliamentary procedure for annual meetings are as follows:

- Members must be recognized by the presiding officer before speaking;
- A motion to take action must precede any discussion of an issue;
- Motions must be seconded;
- Members may only speak to a specific issue twice;
- The presiding officer does not participate in discussion; and
- Formal votes are taken by voice or ballot.

In contrast, formal procedure in a meeting of fewer than a dozen may actually hinder business. ***Robert's Rules of Order* recommends that procedure in smaller boards be less formal**, such that:

- Members are not required to obtain the floor and can make motions or speak while seated;
- Motions need not be seconded;
- There is no limit to the number of times a member can speak to a question, and motions to close or limit debate generally should not be entertained (unless the group has adopted a rule to the contrary);
- The chair need not rise while putting questions to vote;
- The chair can speak in discussion without rising or leaving the chair; and
- Subject to rule or custom, the chair usually can make motions and usually votes on all questions.

While smaller boards can operate more informally, there are times that more formal procedure may be warranted. If a particular issue is hotly contested or likely to subject the board to publicity or a lawsuit, more formal procedure can ensure that procedural safeguards have been observed.

The Chain of Governing Documents

Chain of Governing Laws and Documents

- Federal Laws
- North Carolina General Statutes 55A – Nonprofit Corporations Act
- North Carolina General Statutes 47A – North Carolina Unit Ownership Act – applies to condominiums of 5 or more units created after January 1, 1984.
- North Carolina General Statutes 47C – North Carolina Condominium Act – applies to all condominiums created after October 1, 1986.
- North Carolina General Statutes 47F– Planned Community Act – applies to all other associations
- Local Government Ordinances
- The Association’s Declaration of Covenants, Conditions, and Restrictions
- The Plat
- The Articles of Incorporation
- The Association’s By-laws
- Other Rules, Regulations, and Resolutions

Examples of Federal Laws include:

- Fair Housing Act
- Americans with Disabilities Act
- Fair Debt Collection Practices Act
- Over-the-Air-Reception Devices (“OTARD” satellite rules)
- Virginia Graeme Baker Pool and Spa Safety Act”

Examples of Local Government Ordinances include:

- Abandoned automobiles
- Animal control, waste & leash laws
- Lawn irrigation and stormwater management
- Noise and public safety
- On street parking and emergency vehicle access
- Recycling

Our Association's Quick Reference Info

Association Website: _____

Management Company: _____

Association Manager: _____

Important Dates

Annual Meeting _____

Board Meetings _____

ARC Meetings _____

Other _____

Board Members

Committee Members

Important Info

Insurance _____

Landscape _____

Pool _____

Community Watch _____

Notes _____
