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Boards of Directors: Knowing Your Duties and Powers

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A board of directors is not just the governing body of a community association; board members are also fiduciaries and leaders within the community. This newsletter examines some of the important roles of a board of directors within a community association.

Typically, a board is composed of several officers and directors that include the president, vice-president, treasurer, secretary and members-at-large.

The president is generally responsible for preparing the association's meeting agendas, presiding over meetings, and executing legal documents on behalf of the association.

The vice-president assists the president in carrying out his/her duties, and may assume the president's duties in the event of the president's absence or inability to act on behalf of the association.

The treasurer is responsible for maintaining the association's financial records and assists in developing and managing the association's budget. The treasurer also oversees the association's financial investments, the collection of assessments

and the disbursement of funds to satisfy the association's financial obligations.

The secretary is responsible for maintaining the association's membership roster and business records, preparing and maintaining the association's meeting minutes, recording votes of the board and the members, and distributing information to the members.

Members-at-large serve at the pleasure of the officers. They assist the officers in discharging their duties and often serve on the association's committees.

While each position has its own set of responsibilities pursuant to the bylaws of the association, the entire board works together as a team, often with the help of a managing agent, to handle the daily operations of the association.

The board is vested with several powers and duties, which consist of transacting business on behalf of the association, conducting regular board meetings and annual meetings for the members, maintaining association records, managing the financial obligations of the association, budgeting, levying and collecting assessments, adopting rules and

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regulations, enforcing the governing documents or condominium instruments, maintaining and repairing the association's common areas or common elements, purchasing adequate insurance for the association, and promoting an overall sense of community within the association.

Of course, in conducting the affairs of the association, the boards may consult and reasonably rely on information, advice, reports and recommendations of the association's legal counsel, managing agent, accountant, committees and other business professionals, so that it may make educated business decisions.

Due to the powers vested in the board, a fiduciary relationship exists between the board and the association members. As fiduciaries, board members owe the members of the association certain duties, including the duty of loyalty and the duty of good faith. This means that in managing the association's affairs, the board must always act in the association's best interests, and perform its duties to the association with diligence, objectivity, integrity, and exercise of due care.

Additionally, it is very important that the board avoid the appearance of any impropriety to insulate itself from claims of breach of its fiduciary duties and to maintain the members' trust.

Some common issues for boards to watch out for in conducting the affairs of the association include:

- Exceeding the authority granted to the board by the governing documents. While this point is applicable to all associations regardless of the jurisdiction (VA, DC, MD), it was recently highlighted by the Circuit Court of the City of Fairfax, Virginia in *Farran, et al. v. Olde Belhaven Towne Owners Association*, in which the court held that:

Although Va. Code § 55-513(B) does grant property owners associations authority to impose fines in certain circumstances, that authority is limited to situations where an association's declaration expressly allows it to impose fines or its declaration expressly allows it to adopt rules or regulations which impose fines...the omission of a provision allowing [Belhaven] to impose fines as a method of enforcement shows an intent to exclude...Nothing in Va. Code § 55-513(B) gives [Belhaven] authority to exceed the power granted to it in its governing documents. See, 2010 Va. Cir. LEXIS 92.

- Conflicts of interest. These must be disclosed immediately and the involved board member should abstain from casting a vote on the issue;
- Candor and transparency. Meetings should be open to the members unless the board is convening in executive session;

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- Books and records. These should be clear, complete, accurate, and available for review by members;
- Preferential/unfair treatment. Each association member should receive equal treatment whether the matter involves an architectural application or enforcement of violations;
- Omissions/failure to act. The board is charged with conducting the affairs of the association and making decisions on its behalf, so it is important that the board take timely action to address such matters and hold regular meetings to do so; and
- Confidentiality. The board should maintain the confidentiality of certain matters, such as information pertaining to personnel matters, reports, opinions, and recommendations of association's legal counsel, contracts currently in or under negotiation, individual member files, and executive session discussions. By law, information pertaining to these matters may be withheld from disclosure to members of the association and the public.

Clearly, being a board member on an association's board of directors is not a position to be taken lightly. We thank our board members for taking a personal interest in the success and betterment of their respective associations.