

## What is Fiduciary Duty?

If you are going to be serving on your HOA Board, or you are currently serving on the Board, you need to understand Fiduciary Duty.

Though the term is typically used in the legal and governmental system, it can also be applied to any professional relationship, including the relationship between Board Member and homeowner. Below is a breakdown of Fiduciary Duty and what it has to do with HOA's.

### What is it?

Fiduciary duty is defined as "a legal duty to act solely in another party's interests" (Cornell's Legal Information Institute). It is the relationship between lawyer and client, guardian and ward, or patient and doctor. In such a relationship, there is a fiduciary, who is the one serving, and the beneficiary or principal, who is the one being served. In the case of a doctor and patient, the doctor would be the fiduciary while the patient is the principal. Fiduciary duty is upheld highly throughout the U.S. governmental system, and if it is honored and used properly, should be a liaison of honesty, loyalty, and trust. There are a couple different kinds of fiduciary duty that can be found in everyday occurrences, not just in the legal or governmental system.



**Does Being Past Due  
in HOA Assessments  
Affect Your  
Credit Report?**

**Page 2**



**The Purpose  
and Benefits of  
Stormwater  
Systems in Your  
HOA Community**

**Page 3**



## What types of Fiduciary Duty are there?

There are two main types of fiduciary duty: Duty of Care, and Duty of Loyalty. Both are vital to the relationship, yet both should be simple to follow.

**Duty of Care-** Duty of care in simplified terms means that the fiduciary should be using the utmost care and diligence when dealing with it's principal. Under the duty of care, the fiduciary should be making reasonable decisions, listening to their beneficiary's concerns and resolving any issues in an orderly and timely matter. Duty of Care basically puts the principal in the center of the universe for the fiduciary to serve and care for.

**Duty of Loyalty-** Duty of loyalty is to be loyal and undivided from the attention of your company or organization. Under this duty, you should be putting the interests of your beneficiary first with no competition. Failure to do so is a violation of your fiduciary duty, and most of the time, can end in legal consequences. The most important thing to remember when deciding whether something is within your boundaries as fiduciary, is that you are here to serve your beneficiary, not the other way around.

## What does Fiduciary Duty have to do with HOA's?

Since the relationship between an HOA and its homeowners is a business relationship (at least it should be), it is mandatory that the fiduciary duty of the Board Members and any other HOA official is outlined and enforced. As Board Members, you are charged with maintaining public facilities, handling homeowner's money, and keeping up the property appearance for other potential homeowners. These obligations should be easier to defend with the knowledge that your homeowners are trusting you to be loyal and caring with their best interests in mind. You must put the homeowner's needs first, as you are a representative for the HOA. Fulfill your fiduciary duty, and the homeowners of your HOA will thank you.

Fiduciary duty isn't so much a duty as it is common sense. Be loyal, attentive, and caring for your beneficiary, whoever it may be, and your will have satisfied your place as fiduciary.

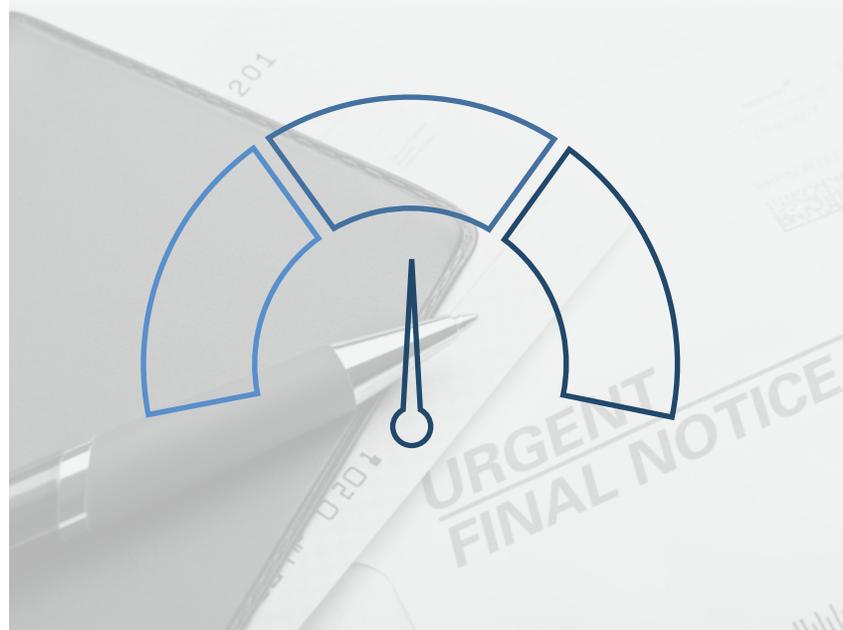
# DOES BEING PAST DUE IN HOA ASSESSMENTS AFFECT YOUR CREDIT REPORT?

Assessments are an essential part of living in an HOA; the Association cannot function without proper funding and preparation. Because late or unpaid assessments hurt the entire community, credit reporting is one way to ensure that residents pay assessments in full and in a timely manner.

## Is it legal for an HOA to report a homeowner who is delinquent in paying their HOA assessment fees?

Yes, it is perfectly legal for an HOA to report a homeowner who is delinquent in paying their HOA assessment fees. Whether or not the HOA is the entity that does the actual reporting will vary from community-to-community. Membership with a credit bureau is costly, so small organizations, such as many homeowners' associations, generally don't have one. However, if a homeowner becomes delinquent, the Association may hire a collection agency to gather the money that is owed. Collection agencies hold contracts with credit bureaus, and therefore, the unpaid debt will be recorded on your credit file.

It is important to note that the homeowner is legally entitled to access the information that consumer reporting agencies collect, as well as dispute any inaccuracies.



## How does falling behind in HOA assessments affect one's credit rating?

An outstanding collection account can be quite detrimental to one's credit rating. Not only is the collection account listed as a negative report, but once the debt is paid, the negative information does not get removed from the credit report. Both paid and unpaid collections can remain on a credit report for up to seven years! While on the report, this will have a negative impact on any efforts to qualify for a loan or other form of credit (including purchasing a home or vehicle), and can also affect the homeowner's ability to obtain a job.

## What can a homeowner do to protect or improve their credit rating?

To protect or improve a credit rating, a homeowner can be sure to remain current on all HOA assessments, mortgage payments, and other bills. One should do everything possible in order to make full and timely payments; this should also include not taking on any payments that he or she will not consistently be able to pay. For example, a person should always be aware of how much the monthly Association dues will be, and be able to commit to paying that amount, before going under contract on a property.

# The Purpose and Benefits of Stormwater Systems in Your HOA Community

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A body of water dotting the landscape in an HOA community can be not only an attractive feature but also serve an important purpose. At first sight, a pond may seem like a part of the natural environment surrounding it. In most cases, a pond located within a community is part of a larger stormwater system. Stormwater ponds play an important role when it comes to water and wildlife management.

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## The Necessity of Stormwater Systems

When rainfall lands in a developed area, it must have someplace to go. Referred to as runoff, rain exiting parking lots, roads, and buildings—water-resistant surfaces—collects in ponds or storm basins. Without a stormwater pond, the runoff enters the nearest waterway. By having some place for the runoff to go, the community is safe from potential flooding.

Runoff is especially concerning for the environment due to the pollutants that travel in the water. Rain gathers sediments, chemicals, and litter as it lands on surfaces. The advantage of stormwater systems is that they filter these harmful substances from the water. The filtration process prevents pollutants from reaching streams, watersheds, rivers, and ultimately, the ocean.

## Stormwater Systems in Your HOA Community

The very design of stormwater systems—to mimic the natural environment—draw wildlife to the area. Certain types of animals, fish, and insects depend upon habitats like a stormwater pond for survival.

Stormwater systems require regular maintenance. The overall appearance of a stormwater pond in your HOA can make or break the sale of a home. A dirty and obviously neglected pond can result in a negative first impression for your community.

Adding features like that of a fountain can have not only aesthetic benefits but can also help the health of your pond. By recirculating the water, fountains can reduce the mosquito population, control odors, and reduce algae.

Educate Association members about ways they can help reduce water pollution. Members may not realize that washing their car with a garden hose contributes to runoff or that a vehicle that leaks oil is also harmful to the environment.

A stormwater pond can serve as a centerpiece of community pride when it is properly maintained. At the same time, it helps control flooding, provides homes for wildlife, and protects major waterways.