



UNDERSTANDING ROLES & RESPONSIBILITIES WITHIN YOUR COMMUNITY ASSOCIATION

HOAMCO®



ROLES AND RESPONSIBILITIES OF THE BOARD OF DIRECTORS

The Board of Directors bears the ultimate responsibility for operating the Community Association on behalf of its owners. It is the role of a Board to set the policies, standards, procedures, programs, and budget of its Association. A Board may implement its own decisions for its Association– or delegate implementation to a manager, committees, or an independent contractor.

Business Responsibilities

The general duties and responsibilities of Officers and Directors are quite similar to, if not identical to, those found in the ordinary not-for-profit corporation. In most cases, the Officers and Directors will be the same individuals.

The Officer needs to remember that they do not make policy "on the spot" but rather implement the Board-made policy. The Board Member needs to remember the necessity of establishing and publishing rules and regulations which afford clear guidelines and assistance to the Officers, General Manager, and Staff Members who are in daily contact with the Association’s challenges.

Legal Duties

The “fiduciary duty” of an Officer or Director is, in reality, divided into two levels of performance, one more stringent than the other. All Officers and Directors owe their associations a duty of care. In addition, Directors owe a duty of “undivided loyalty and honesty.”

Duty of Care

The first part of the Officer’s or Director’s duty is to observe the “Business Judgment Rule.”

As with other negligence tests, a Director will not be liable for decisions or actions which result in losses to the Corporation, so long as he or she exercises the same degree of care and skill as an ordinarily prudent Director would exercise under similar circumstances. Lack of supervision and over-delegation are areas fraught with probable liability.

A court will neither interfere with the internal affairs of a corporation nor substitute its judgment for that of a corporation or that of the Directors or Officers, so long as they arrive at a decision for which there is a reasonable basis. In applying the "duty of care," courts have considered both subjective, as well as objective, factors. The nature of the enterprise (Association), whether the Director’s job is full-time or part-time and whether or not he or she has a special background, are also among the factors a court will consider.



The fact that a Director is a part-time volunteer without a special background does not excuse them from exercising due care; it simply helps define what the standard duty of care should be in a particular case.

Basically, the rule is protective. The one challenging a Director's actions must carry the burden; the Director does not have to prove he or she acted properly. The Business Judgment Rule protects a Corporate Director's actions unless a plaintiff proves one of the following four elements:

- The Director failed to make any decision
- The decision by the Director was uninformed
- The Director was not disinterested or independent (this is where all Association questions require some tailoring)
- The Director was grossly negligent; or the action by the director was unauthorized. "Unauthorized" means outside the Association's powers which are set out in the Declaration and the Bylaws

Courts consider the process the Board followed, rather than the wisdom of the Board's decision. The fact that what a Board does is unwise or inexpedient does not matter under the Business Judgment Rule.



Protective Measures - The Business Judgment Rule

Under the Business Judgment Rule, to protect yourself as a Director you should (1) be informed about the Association's business (2) attend and participate in meetings or, if absent, have the minutes reflect the reason; (3) register a dissent in the minutes when in disagreement with the Board's actions; and (4) be knowledgeable about the Declaration, Bylaws, Corporate Charter, and other Association documents.

When making a business decision, a Director must act in good faith pursuant to a free, honest exercise of judgment not influenced by personal or other considerations, except for the welfare of the corporation. At this point, the fiduciary duty of good faith, fair dealing, and loyalty comes into play. The fiduciary duty mandates a good faith effort to work for the Association's benefit and not to use the position of "Director" to enhance one's personal interests. This duty is "most sensitive," and courts will closely scrutinize any action which appears to involve self-serving.

The duty to act with good faith and with diligence, care, and skill does not apply only to "business" decisions, but also to the governmental or regulatory decisions which Board Members must make, such as rule enforcement, assessment collection, review of architectural changes, and many others. Failure to discharge this duty can subject the Director to personal liability. The Director can also be liable for illegal or tortious acts of the Board or of the Association if he or she participates in the decision or knowingly fails to take steps to avoid the action. Reliance upon one to whom authority has been delegated does not thereby relieve the Director of responsibility. Failure to exercise supervision which permits mismanagement or non-management is an independent ground for finding a breach of fiduciary duty. Supervision is not the same as micro-management which itself can be an improper action.

Duty of Undivided Loyalty and Honesty

This more stringent duty or rule of conduct arises in those areas involving self-dealing, conflicting interests, or other such issues. Not every conflict is real, however, and it is important to realize that in an Association in which the Directors are also owners, all decisions will affect them both personally and in their official capacity. Consequently,

as the United States Court of Appeals for the Second Circuit has said, the standard for what is a conflict should be flexible. When there is a conflict, the decision is once again tested by the Standard of Reasonableness. When an Officer or Director is able, because of their position, to exercise a controlling influence over the rights, interest, and property of another, they are in a position of trust and confidence with respect to the other person and is held to a higher standard of conduct.

In summary, Board Members have the responsibility to:

- Fulfill their fiduciary duties to the community and exercise discretion in a manner they reasonably believe to be in the best interests of the Community
- Exercise sound business judgment
- Balance the needs and obligations of the Community as a whole with those of individual owners/residents
- Understand the Association Governing Documents and become educated with respect to applicable state and local laws

- Establish Committees or use other methods to obtain input from owners
- Conduct open, fair, and well-publicized elections
- Welcome and educate new members of the community
- Encourage input from residents
- Encourage events that foster community
- Conduct business in a transparent manner
- Allow owners access to appropriate community records
- Collect all monies due from owners and non-owner residents
- Provide a process residents can use to appeal decisions affecting their non-routine financial responsibilities or property rights
- Provide complete and timely disclosure of personal and financial conflicts of interest related to action of community leaders



ROLES AND RESPONSIBILITIES OF COMMITTEES

Committees are the backbone of the Association. Developing an active, capable volunteer group through the formation of committees promotes a healthy Community Association. They focus on topics ranging from finance to architecture. Committee reports help the Board to make informed decisions. Some Associations have two types of committees—Standing and Ad Hoc.

- Standing Committees perform a continuing function and usually deal with specific areas (e.g., finances, grounds maintenance, social functions). Standing Committees operate indefinitely, though their membership may change
- Ad Hoc Committees are usually set up to accomplish a specific objective. For example, a Board might authorize an Ad Hoc Committee to investigate alternatives to an assessment increase. Ad Hoc Committees function until they have researched and reported their findings—they may be dissolved after just one meeting or not for several years

Association Bylaws and documents provide the Board with the authority and oftentimes the guidelines on setting up committees. The way a Committee is structured, and the guidelines established for functions and interaction with the Board, affects the Committee's success.

The purpose for forming a Committee must be easily understood and recognized. When the Board of Directors commissions a Committee, it should provide the Committee with a clear purpose and responsibility. A recommended tool to achieve this task is a "Committee Charter". A charter sets forth the purpose, responsibilities, and organization of a Committee. By providing a charter, the Board of Directors clarifies its expectations and ensures that the Committee's efforts will be concentrated on a particular task. The tasks assigned to a Committee must be realistic and achievable. Please note that it is not HOAMCO's practice (unless negotiated as part of the contract) to attend committee meetings. HOAMCO may, however, support the Committee by means of providing documents, samples, etc., as needed.

The Board should take actions to promote Committee success such as:

- Only forming a new Committee to meet a specific need
- Acting on Committee recommendations
- Recognizing Committee Chairs and Committee Members for their time and efforts



ASSOCIATION ROLES

The various responsibilities and, hence, potential liabilities, that are involved in the development and administration of associations result from the dual nature of the Association's role and function, operating both as a government and as a business. The Association provides a vehicle for the individual unit owners to work together.

Because all owners become members of the Association upon taking title and because the Association is empowered to levy and collect assessments, to make and enforce rules, and to permit and deny certain uses of the property, it can exert tremendous influence upon the individual's property rights which are normally enjoyed as a concomitant part of the fee simple ownership. It is this ability to influence that makes the Officers' and Directors' authority and responsibility different and special.

Government Role

The Association's governmental role arises from two powers: first, as noted, the power to control property and, second, the power to levy or tax through the assessment authority. Moreover, the Governing Documents are filed with and enforced through State Courts. In some cases, the Association provides for its members', road maintenance, street lighting, and refuse removal; it also may provide security services and various forms of communication within the Community. There exists, therefore, a clear analogy to the municipality's police and public safety functions; moreover, these functions are financed through assessments or "taxes" levied upon the members of the Community Association.

The governmental role of the Association creates a special concern for strict observance of the dictates of "due process" of law. This is not the full array that we think about in the constitutional sense because the Association is not a public body. It is a flexible concept requiring such procedural protections as the particular situation demands. What is required depends upon the

circumstances, and the Association Governing Documents. Courts will become involved when there is an abuse of the Directors' discretion, or when there is a clear, unreasonable, arbitrary intrusion into the rights of one or more owners.

At the same time, there is a certain degree of relinquishment of individual rights for the common good. The Courts have tried to give guidance, but exactly how these rules work is also an evolving concept. Basically, the rule is that each owner "must give up a certain degree of freedom to use their property" because they are part of a "democratic sub-society of necessity more restrictive than the ownership of property generally." In other words, the Association and the individual have limits upon their actions. That limit is generally the "rule of reasonableness."

Business Role

The Association's business role is obvious. It is a service-oriented, cooperative business for its members. It does so either through its own employees or through contracts with third parties. However, services are provided, the business duties are a direct result of the powers conferred upon the Association by the Declaration which created it. The Declaration and Bylaws make the Officers and Directors responsible for a variety of business matters. They must concern themselves, as must the Officers and Directors of any corporation, with business details, such as finance, asset and property management, taxation, insurance, employee relations, and many other considerations inherent in operating a substantial business.



ROLES AND RESPONSIBILITIES OF OWNERS

The basic authority in a Community Association lies with the Owners. However, the Owners elect a Board of Directors to act on their behalf. Usually the Governing Documents delegate almost all of the Association's decision-making powers to the Board.

Typically, the owners have the voting power to:

- Elect and remove Directors
- Amend any of the Governing Documents, except Board resolutions
- Approve special assessments or capital improvements

Occasionally, Owners will approve the Annual Budget for the Association. But all other decisions are usually left to the Board. If the Owners do not like the Board decision, they usually do not have any authority to "veto" or "undo" the Board's action. Under such conditions, their only remedy is to elect a new Board to represent them. The Board has an obligation to listen to the Owners' concerns and to take those concerns into consideration in making its decisions.

Formal means for obtaining owner input include:

- Resident/Owner forum at Board meetings
- Participation of Owners on committees
- Annual membership meeting

Other means of Owner input include Owner surveys and letters and suggestions from owners. Just as a Board has the responsibility to encourage Owners input via these means, Owners have the responsibility to use them to make their views known.

Owners have the responsibility to:

- Read and comply with the Governing Documents
- Maintain their property according to established standards
- Treat Association leaders honestly and with respect
- Vote in community elections and on other issues
- Pay Association assessments and charges on time
- Contact Association leaders or managers, if necessary, to discuss financial obligations and alternate payment arrangements
- Request reconsideration of material decisions that personally affect them
- Provide current contact information
- Ensure that those who reside on their property adhere to all rules and regulations



ROLES AND RESPONSIBILITIES OF THE COMMUNITY MANAGER AND HOAMCO

A manager's authority is defined and limited by:

- The Governing Documents which define the authority of the Board to enter into a contract—some governing documents require the Board to retain professional management;
- The Management Agreement or contract; and
- Actions of the Board which delegate specific authority and duties to the Manager, (the Board is ultimately the decision maker for their Community Association).

The Manager is required to represent the best interest of the Community Association.



THE HOAMCO DIFFERENCE

HOAMCO is different from the “rest” because although HOAMCO is a large company with streamlined processes and the best technology at our fingertips, we have organized our business in a way that ensures highly customizable options to service our clients according to their unique needs. We have 15 offices across five states and each location feels more like a small business rather than part of a large company, so while you get all of the benefits of a well-known and reputable corporate management company, you also get the hands-on, personalized touch from your local management team.

In addition we perform all our accounting functions in-house. Our phones are always answered by a live person – we will never engage an automated answering system. We offer full-marketing services, including social media management via our creative services department, and proprietary, customized websites, all of which is outlined within the proposal. We are not a publicly traded management company or a multi-owner corporation. We are a family-owned business and have been since day one.

Finally, one of the most important things that differentiates us from the “rest” is our employee workload distribution. Compared to other management companies, our managers have half the number of communities in their management portfolio than other management companies. At HOAMCO, our CEO, CFO, COO and Executive Directors are all personally involved in managing our communities - we believe in the “team” approach and that community, your community, matters most.

That is the “HOAMCO Difference”.

WELCOME LETTER FROM THE CEO: JUSTIN SCOTT

As CEO I am proud to introduce you to HOAMCO.

HOAMCO's entire business model rests on serving our clients and building a sense of community in each Association we manage.

Over the past 3 decades HOAMCO has expanded to a portfolio of over 430 communities monitored by 400 employees working out of 15 offices, now housing over 60,000 sq. ft., in over 5 states (Arizona, New Mexico, Colorado, Nevada, and Washington).

30 Years ago, I started in a business of enforcement and collections, but over the years our focus became centered on "community," and that is the core value we have built our business around.

I am proud to celebrate three decades of excellence with you.

If there is any way we can be of service to you and your Community, my contact information is below and I am just a phone call or email away.

Sincerely,



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