



## ASSOCIATION POINTERS

### Community Roles & Responsibilities

The basic authority in a community association lies with the owners – the “stakeholders” of the corporation. However, the structure of this corporate body is set up so that the owners elect a Board of Directors to represent them and act on their behalf.

The governing documents delegate almost all of the Association’s decision-making powers to a Board of Directors. The Board is entrusted to govern the Association, to manage its assessment funds, and to perform their duties prudently, in good faith, and in the best interest of the entire community.

The primary reason why the authority for decision-making is not left with the owners is because the owners have no fiduciary obligation to make decisions in the best interest of the community. They are allowed to have their own personal opinion and to vote according to what serves their interest. Board members do not have that right once they become Directors.

#### The Owners

The owners have few **rights/powers**; they hold the *voting power* to:

1. elect and remove directors
2. amend governing documents (except Board Resolutions)
3. approve/ratify the annual budget

If the owners do not like the Board’s decision, they do not have the authority to “vote on” or “undo” the Board’s action. *Their only remedy is to elect a new Board to represent them.*

With that being said, the Board has the **obligation** to listen to the owners’ concerns and to take those concerns into consideration in making its decisions. Remember that Board members serve as “representatives” of the community, not as rulers!

And, just as the Board has the **responsibility** to encourage owner input, owners have the responsibility to use those opportunities to make their views known!

The owners also hold certain **responsibilities** under the governing documents:

1. uphold the community’s standards
2. pay their assessments in a timely manner
3. participate in matters of election and voting.

#### The Board of Directors

The Board’s role is to set the policies, standards, procedures, programs & budget of the Association. At times, the Board implements its own decisions, while other times it designated implementation to another party, which could be the manager, a committee or a contractor, but it can **never** pass ultimate responsibility!

There are three areas of decision-making that is the **responsibility** of the Board of Directors:

1. **Business:** monitor administrative, financial and property maintenance matters.
2. **Governance:** make decisions on enforcement of documents; adopt rules and decide issues of policy.
3. **Community:** promote harmony through the use of services & programs; communication; allowing for appeals.

The Board must ensure that all three areas of responsibility are being managed in a balanced environment for the best interest of the community.

The Board has a fiduciary relationship to the Association members. Its fiduciary duty requires Directors to act for the benefit of **the community as a whole**. They must avoid conflicts of interest and acting out of self-interest. The Board bears the **ultimate responsibility** for operating the Association on behalf of its owners. It cannot delegate to anyone else its legal obligation to protect the asset, which is the total community! There are two specific fiduciary duties imposed on all Directors: The Duty of Care and the Duty of Loyalty.

The **Duty of Care** means using the care an ordinarily prudent person, in a like position, would exercise under similar circumstances. For example: It is clear that the role of the Board is to be the decision-maker for the corporation. A Director/Board member that does not regularly attend board meetings or does not come to the meetings prepared to make decisions is usurping their duty of care.

The **Duty of Loyalty** means avoiding conflicts of interest, avoiding usurping a corporate opportunity, and understanding their role in management of the Association. Practically speaking, that means that when a Board member walks outside of the boardroom...

- They must recognize that they are easily perceived to be speaking on behalf of the Board when talking “business” with other Members. It is not appropriate to allow this perception to occur, and it is the **responsibility** to clarify who opinion they are relaying! Even then,



expressing personal opinions may be a breach of both the duties of care and loyalty!

- They are not authorized to make representations to vendors, contractors, or other service providers on behalf of the Association **unless** they have been specifically authorized to serve as the spokesman for the Board. This includes soliciting bids and discussing Association issues with others, especially those outside of the membership.
- They must support the decisions of the Board, even if it was not the way they voted. They have been elected to serve as a representative of the Members, not as a representative of their opinion alone. Bad mouthing other Board members outside of the Boardroom breaks down the trust between Board members and collapses the Board's ability to work together effectively.
- Deception in the community – and particularly within the Board – is a cancer that requires extreme surgery! Deception occurs when Board members are dishonest with each other and/or dishonest with other Members, misrepresenting their position on issues or their willingness to support an issue. Deception is often tied to *personal agendas* of Board members, which have NO PLACE in the Association's leadership.
- Board members that hold (or attend) unauthorized "meetings" in their homes to discuss Association business without the knowledge and endorsement of the Board are time bombs! This activity divides a community as fast as lightning strikes and most often dispels misinformation. This kind of activity is frequently the venue of a Board member driving a personal agenda or trying to overthrow the Board.

### **The Manager/Management Team**

In understanding the roles and responsibilities of the Owners and the Board, it is also important that the "other" member of the team be clearly understood. The manager's role is to:

1. implement the decisions of the Board (the manager is NOT the decision maker for the Association and cannot assume that role)
2. administer the services, programs & operations of the Association *within the policies & guidelines of the Board*
3. provide information, training & leadership to the Board, and
4. fulfill the terms of the Management Agreement.

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