

Board Boot Camp:

Your Intro to Effective Board Leadership

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Fiduciary Duty – Why Does It Matter

- It will help you make decisions
- It will protect you from personal liability
- It will help you to be strong and effective leaders

The Corporate Framework

- The **Association** is a corporation that was created to manage the common interest development
- The **Members** are the shareholders, who invested in the corporation
- The **Board** is the governing body that is charged with protecting the corporate assets

The Board's Top Responsibilities

- Financial management
- Maintenance and repair
- Enforcement
- Preserve, protect and enhance property values

What is Fiduciary Duty?

- Fiduciary = “a person to whom property or power is entrusted for the benefit of another”
- Highest duty of care and loyalty recognized by law
- Board member owes a dual fiduciary duty – to the Association and to the membership

Examples of Fiduciaries

- Board to corporation and to shareholders/members
- Trustee to beneficiary
- Financial advisor to client
- Attorney to client
- Doctor to patient

Fiduciary Duty – The Standards

Corporations Code § 7231(a)

Board members must act:

- In **good faith**
- In the **best interest of the Association**
- After **reasonable inquiry**
- In the way an **ordinarily prudent person** would act in a like position

When Must Directors Comply with Fiduciary Duty?

- All **ACTS** as a director
- All **COMMUNICATIONS** as a director

Act In Good Faith and In Best Interests of the Corporation

DIRECTORS

- Represent the entire Association and all of its members
- Prioritize financial health, property values and legal obligations
- No personal gain or benefit
- Make unpopular decisions

POLITICIANS

- Represent their constituency within the government
- Prioritize opinions, campaign promises
- Make decisions favoring the interests of a particular group
- Popularity contest

Act Only After Reasonable Inquiry

- Investigate
- Consult with experts
- Entitled to rely on information prepared by experts retained by the Association
 - Construction – plumbing, electrical, roofs, trees, etc.
 - Attorneys and accountants
 - Insurance broker

QUALIFIED IMMUNITY

Corporations Code § 7231(b)

Protection against personal liability for decisions made:

*... in **reliance on information**, opinions, reports or statements by **corporate officers or employees** whom the director **believes to be reliable** and competent in the matter, or **attorneys, accountants or others** with respect to those matters in which the director believes such persons to be competent.*

Act as an Ordinarily Prudent Person in a Like Position

- Think like a trustee
- Reasonable decisions based on available information
- Avoid unnecessary risk

Duty of Confidentiality

- Who decides what is confidential? *The Board – not individual directors*
- Who can waive confidentiality? *The Board*
- When does the duty of confidentiality end? *Never*

Confidentiality – Factors to Consider

- Does the Board have a statutory duty to provide the information?
- Does the law allow the information to be redacted, withheld, or discussed in executive session?
- Is sharing this information in the Association's best interests?
- Will there be backlash?
- Avoid political motivation

Types of Confidential Information

- Addresses and emails
- Bank account and social security numbers
- Collection issues
- Attorney/client communications
- Confidential settlement agreements
- Legal disputes and potential actions involving the Association

Act Within Scope of Authority

- Act within the scope of your authority
 - Individual directors only have the authority to act given to them by the law, the governing documents or the board
 - Individual directors do not have authority to speak for the board or Association without explicit board authority

Business Judgment Rule/Judicial Deference

IF

- Directors act within the **scope of their duties**
- Act in **good faith** and in the manner believed to be in the **best interests** of the Association
- Directors act with care, use **reasonable inquiry**, and act as an **ordinary prudent person** would in a similar position under similar circumstances
- Seek and rely upon the advice of **third-party experts**

THEN

- Court applies business judgment rule (judge will not substitute their judgment for that of the board if decision is made properly)
- Protects even if decision is not to act, but does not protect for failure to make a decision (deciding to take no action is different than taking no action)
- Directors protected from personal liability (“safe harbor”)

Fiduciary Duty Applies to All Director Actions

- **When** decisions are made
- **How** decisions are made
 - Communication
 - Deliberation Process
- **Basis** of decisions made

Conduct at Meetings

- All board members must be permitted to **participate meaningfully**
- Board has the fiduciary duty to be **cooperative** and **non-disruptive**
- Board codes of conduct

Communication of Decisions

- Board meeting minutes should accurately reflect board decisions
- Once decisions are made, **board should speak with “one voice”** – even if there are strong differences of opinion
- **Communication with members should support board’s decisions**

Leadership = Setting the Right Tone

- Board members are also volunteers
- Board service should not be a part-time job
- **Rely on your professional management team!**
- Respect and collegiality from Board members will promote respect for the Board's actions

Plan for Your Successors!

- Board volunteerism shouldn't become a life sentence
- Encouraging wider community participation overall creates future board members
- Efficient and professional board meetings increase desire for volunteers to serve
- Manager communications of board's goals and success stories to association members
- Social events foster sense of community and encourage board participation

Optimizing the Management Relationship

- Most effective partnership – board is policy-setting entity
- Manager brings information and resources to board's attention
- Policy governance model – board sets policy and manager executes it
- Manager performs day-to-day tasks, keeps board informed
- Manager is communication liaison between board and owners, third parties