



## **The Role of the Board of Directors in Today's Common Interest Development**

To be effective, a homeowners association needs a strong board of directors that understands its role and pursues it with passion and a concise mission in mind. The following outline provides an overview of board roles and responsibilities.

To form an effective board, directors must have a clear understanding of the strengths and weaknesses of the association, its history and what is to be accomplished. Every homeowner association should have responsibility for its assets as well as its operation in accordance with standards established by state and federal law, local ordinances, and the governing documents upon which the entity itself was created. To the extent that the association has such authority and control, it is the board of directors that makes certain these responsibilities are fulfilled.

### **Understanding the homeowners association concept:**

The homeowners association is the cornerstone of a planned residential community. It brings continuity and order to the community, it preserves the architectural integrity and it maintains the common elements. Properly run, the association promotes the concept of community and protects the neighborhood's property values. In many cases, it collectively makes available recreational and other facilities that might not otherwise be affordable or available to homeowners and residents on an individual basis.

Deed-initiated homeowners associations have become an essential part of the overall concept of residential property ownership in today's marketplace. Purchase of a home or lot often brings with it mandatory membership in an association which then provides the structure for operation and management of the residential development. With membership comes certain maintenance obligations, financial responsibilities, and a commitment to abide by use restrictions and other rules of the association. To a degree, it necessitates individual conformity for the good of the whole.

The association's responsibilities may be limited to basic maintenance functions or they may be expanded to include sophisticated and extensive upkeep of the property as well as delivery of special services to individual homes (e.g. back door trash pickup). To be

successful, its officers and directors must uniformly and fairly govern the community, and it must have a reasonable level of participation by each of its members over time.

### **Board of Directors**

The association has responsibility for its common elements as well as the management and operation of the association's business affairs - - all in accordance with standards established by the governing documents created when the community was first developed. To the extent that an association (typically a non-profit corporation) has such authority and control, it is its board of directors that carries out these duties and responsibilities.

Members of the board of directors of an association serve without compensation unless the bylaws of the association provide to the contrary. The board's authority includes all of the powers and duties enumerated in general law, as long as these powers are not inconsistent with the provisions of the documents governing the association.

### **Officers of the Association**

The association acts through its officers and agents. The board of directors makes the policies for the association, but the officers and agents carry out these policies and administrative functions for the community. Some of the officers are clerical while others carry out substantive functions based on policies established by the board of directors. All of the officers have an affirmative obligation to act with utmost good faith towards the association and cannot deal in the funds or the property of the association to their own self advantage. Each association typically has a president, secretary, and treasurer and may have one or more vice presidents. However, an association may officially conduct its business with fewer officers than these, depending upon the laws of a given state.

## **PRESIDENT**

The president of an association is vested with all the powers generally given to the chief executive officer of a corporation. While specific by-law provisions may vary the president's duties, it is generally presumed that he or she will preside at all meetings of the board and the membership. The president will execute contracts, orders and other documents in the name of the association as its agent. When signing documents, the president should indicate the capacity in which he or she is signing in order to avoid any personal liability since the president's signature, under most circumstances, will bind the association under a doctrine of inherent powers.

The president also assumes general charge of the day-to-day administration of the association and has the authority to order specific actions in furtherance of the board's policies. The president serves as spokesman for the board of directors in most matters relating to general association business. Like all officers of the association, the president

has an affirmative duty to carry out the responsibilities of the office in the best interests of the association. Unless otherwise specified in governing documents, the president serves at the will of the board of directors and can be removed with or without cause at any time by a majority of the full board.

## **VICE PRESIDENT**

The vice-president is vested with all the powers which are required to perform the duties of the association president in the absence of the president. The vice president does not automatically possess inherent powers to act in the capacity of the chief executive officer, and may act for the president only when the president is actually absent or otherwise unable to act. The vice-president may assume such additional duties as are defined by the board of directors. Often, the vice-president will chair one or more substantive committees like that of architectural review.

## **SECRETARY**

The secretary of the association is responsible for keeping and maintaining a record of all meetings of the board and the membership and is the custodian for most of the official records of the association. The position of secretary is not simply a clerical position. In many cases, the secretary will not actually keep the minutes of the meetings, but will be responsible for obtaining someone who will do so as a recorder or assistant secretary. As the custodian for the minutes and other official records of the association, the secretary is responsible for insuring access to those records by the members of the association and their authorized representatives.

## **TREASURER**

The treasurer is the custodian of the funds, securities and financial records of the association. When the association has a manager or management company that actually handles the funds on a daily basis, the treasurer's duties will include overseeing the appropriate people to insure that the financial records and reports are properly kept and maintained. Unless the by-laws otherwise specify, the treasurer is responsible for coordinating the development of the proposed annual budget and for preparing and giving the annual financial report on the financial status of the association.

The treasurer does not have the authority to bind the association or the board of directors in dealings with third parties unless the board has provided express authority for the treasurer to do so. As with the association's secretary, the treasurer does not have to perform the day-to-day record keeping functions of the association when this responsibility is transferred to a management company, but the treasurer will ultimately be responsible

for insuring that the financial records of the association have been maintained properly in accordance with sound accounting practices.

### **Fiduciary Relationship and Responsibility**

The members of the board of directors and each officer of the association have a fiduciary relationship with the members of the association. This fiduciary relationship imposes obligations of trust and confidence in favor of the corporation and its members. It requires the members of the board to act in good faith and in the best interests of the members of the association. It means that board members must exercise due care and diligence when acting for the community, and it requires them to act within the scope of their authority.

The fact that the association is a not-for-profit corporation, or that the members of the board are volunteers and unpaid, does not relieve them from the high standards of trust and responsibility that the fiduciary relationship requires. When a member accepts a position on the board of directors, he or she is presumed to have knowledge of the duties and responsibilities of a board member. Board members cannot be excused from improper action on the grounds of ignorance or inexperience and liability of board members for negligence and mismanagement exists in favor of the association and the property owners.

Each board member must recognize the fiduciary relationship and the responsibilities that the board has to the association and each of its members. The board's duties must be performed with the care and responsibility that an ordinary prudent person would exercise under similar circumstances, and the ultimate responsibilities of these unique positions cannot be delegated to a manager, a management company or other third party.

### **A Recap of the Board Member's Role:**

Acting through the board as a whole, a board member should:

- Enforce the documents
- Establish sound fiscal policies and maintain accurate records
- Develop a workable budget, keeping in mind the needs, requirements and expectations of the community
- Establish reserve funds
- Act on budget items and determine assessment rates
- Collect assessments
- Establish, publicize, and enforce rules and penalties
- Authorize legal action against owners who do not comply with the rules
- Review local laws before passing rules or sending bylaws to membership for approval
- Appoint committees and delegate authority to them
- Select an attorney, an auditor, insurance agent and other professionals for the association
- Provide adequate insurance coverage, as required by the bylaws and local governmental agencies
- Inform board members of all business items that require their vote

- Inform members of important board decisions and transactions
- See that the association is protected for the acts of all parties with fiscal responsibilities
- Attend and participate at meetings

Operating a homeowner association carries with it many of the very same duties and responsibilities as overseeing any other business. Serving as a board member is a valuable and rewarding experience that should be undertaken by those who see it as an opportunity to serve their fellow neighbors while protecting and enhancing the assets of the community. It is serious business, but also a task worth doing well in order to safeguard the investments of all.