



## **Board Training Series**

---

### **Chapter 1: Governance**

## **Fiduciary Duty**

Most homeowner associations are non-profit corporations and as a director you have a fiduciary duty.

### ***You have a legal obligation!***

- Act in good faith
- Govern with the care an ordinarily prudent person in a like position would exercise under similar circumstances
- Govern in a manner to be in the best interests of the corporation

## **Board Member Responsibilities**

- Participate in all meetings
- Respect parliamentary procedure
- Maintain confidentiality of executive session meetings
- Accept the board's decision even if in disagreement
- Promote the interests of the association and avoid conflict
- Disclose financial conflicts of interest
- Ensure finances are well managed
- Uniformly enforce the covenants and governing documents
- Place the interests of the association above personal interests
- Resign from the board if unable to accept these responsibilities

## **Board Authority**

Now it's some point in time individually or collectively as part of the board, somebody is going to ask you the question “what gives you the right to do such and such” and in fact your authority comes from the general statutes in the covenants of the association and some of those things that you have authority to do include:

- Creating and amending the bylaws
- Adopt the budget
- Impose Assessments and special assessments
- Enforce the covenants
- Levy fines
- Place a lien on properties
- Enter into contracts for services
- Incur liabilities
- Borrow money
- Sue and be sued
- Act with emergency powers in special situations
- Do all things necessary and convenient not inconsistent with the law to further the activities of the affairs of the corporation

## **Board Member Liability**

Directors are generally not liable for actions taken when performing the duties of their office consistent with fiduciary duty.

It is critical that an association maintain directors & officers Insurance

If the association is a claimant or defendant in a lawsuit, and to the extent that the d&o insurance does not cover the legal fees or judgement, the costs will be borne by all the members.

## **Actions That Can Expose a Board to Liability**

- Failure to govern in accordance with the laws and governing documents.
- Failure to provide due process
- Inconsistently enforcing the covenants or rules
- Having a conflict of interest
- Failure to meet in executive session when appropriate
- Curbside conversations that imply you have individual authority
- Publicly disclosing the names of members with delinquencies
- Email exchanges that become discoverable in a lawsuit.

*To learn more, or to access other documents, please visit: [www.yourhoahelp.com/board-members](http://www.yourhoahelp.com/board-members)*