

Essential Roles and Duties: A Guide for Community Association Board of Directors

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One of the common questions facing community association volunteer leaders after election to the association's Board of Directors is, "What are my duties and responsibilities?" To understand the Board's role, it is important to first recognize that members of the Board of Directors serve as the governance body of the association as a non-profit corporation. Just as the decisions of for-profit corporations like Delta Airlines or Coca-Cola are made by a Board of Directors, the affairs of community associations are also directed by a Board. While the Boards of for-profit corporations make decisions to maximize shareholder value, the Board of a community association makes decisions in the best interest of its members – the owners of the homes within the community.



What are the Board's Responsibilities?

The Board of Directors of a community association is charged with management of the association. The Board considers the business affairs of the association at its meetings and votes on how the association will proceed. In addition to overseeing the operation of the association, the Board ensures that the obligations imposed on the association in its governing documents are carried out. These obligations and activities typically include:

- Hiring and overseeing a manager or management company and any necessary administrative or maintenance personnel;
- Establishing budgets, a collection policy, and the amount of assessments;
- Adopting and enforcing rules, including carrying out any penalties; and
- Employing professional services such as attorneys or accountants.

If the association employs a community manager, the Board directs the manager by setting policy to be implemented by management and voting on contracts, budgets, agreements, and other business affairs of the association. If the association is not served by community management, the Board is also typically responsible for hiring and supervising vendors or contractors to ensure that common areas are physically maintained, collecting assessments, ensuring the association's bills and financial obligations are timely paid, insuring the property as required by the governing documents, and for writing and sending notices and communications to the owners.

What Director Duties and Obligations are Required by Law?

The Board of a community association must conduct itself in accordance with Georgia's Non-Profit Corporation Code, O.C.G.A. §14-3-101, *et seq.* The Code's corporate obligations include annual corporate registration with the Secretary of State, conducting the association's annual meeting, holding Board meetings, maintaining the association's books and records, and responding to requests for inspection of the books and records made by members.

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In addition, the Non-Profit Corporation Code requires a director to discharge his or her duties in a manner the director believes in good faith to be in the best interest of the association and with the care an ordinary person in a like position would exercise under similar circumstances. Good business judgment requires that each director make decisions in the best interest of the association. In order to exercise good business judgment, members of the Board must be informed, attend meetings, express opinion including dissent, know the governing documents, and act when required.

Before taking action on behalf of the association, the Board must confirm it is authorized to act under the community's governing documents, including the Declaration, Bylaws, Rules and Regulations, or Articles of Incorporation. Members of the Board of Directors should not assume that the Board's acts are authorized. The Directors are obligated to exercise good judgment, including an obligation to make informed decisions. If good business judgment is followed, courts generally will not second-guess the actions of a Board. Also, directors generally will not be held liable for honest mistakes of judgment when the Directors are acting in good faith.

Members of the Board of Directors also owe duties of good faith and undivided loyalty – “fiduciary duties” – due to their positions being elected by the membership. Fiduciary duty is imposed by law to prevent a person in a position of special trust or confidence from representing his own interests over the interest of those in his or her charge. In the context of community associations, this duty arises from the mandatory nature of membership in a community association and the power of control vested in the Board. Fiduciary duty obligates the members of the Board of Directors not to compete with the association, not to usurp the association's business opportunities, and to avoid conflicts of interest. In addition, confidentiality is an important facet of the duty of loyalty, as a fiduciary cannot disclose information obtained in the course of his or her service on the Board.

Who Serves as Association Officers?

A common misconception held by members of community associations, and even some Boards, is that the officers of an association are elected by the membership. Officer positions typically include the roles of President, Vice-President, Treasurer, and Secretary, though many communities' Bylaws allow for the Board's appointment of additional officers as necessary to carry out the business of the association. Commonly, governing documents will require at least some of the association's officers to be members of the Board of Directors, but the roles of the members of the Board of Directors and the officers are separate and distinct. The association's Board of Directors is elected by the membership at the annual

meeting or as otherwise provided by the association's Bylaws. However, the officers are appointed by the Board as determined by vote of the Board, not by a membership vote. Officers do not need to be members of the Board of Directors unless required by the association's Bylaws.

The Board adopts association policy and defines objectives, and the officers are given the authority by the Board to carry out these decisions. While each of the officer positions are often responsible for certain duties pursuant to the association's Bylaws, the Board directs the officers in the performance of their duties and can establish additional officer duties. Notably, officers cannot vote on corporate actions based on their status as an officer of the association. If an officer is also a director, he or she votes by virtue of his or her status as a member of the Board of Directors, not in his or her capacity as an officer.

As always, for more information or questions about your association's Board of Directors, please contact your NowackHoward attorney. www.nowackhoward.com