

BOARD BASICS 101: WHAT EVERY BOARD MEMBER NEEDS TO KNOW

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OVERVIEW OF THE BASICS

“Community Association” is the generic term for communities that are created pursuant to recorded covenants or other documents that create an association of the unit or homeowners. The term community association includes condominiums, homeowner associations, and housing cooperatives. These are typically organized as non-profit corporations.

1. Condominiums. A condominium is a form of property ownership, not the architectural style. It is defined as “portions of real estate are designated for separate ownership and the remainder owned in common by all owners.”
2. Homeowners Associations. Homeowners Associations are generally subdivisions of single-family attached or detached homes.
3. Cooperatives. In a Cooperative, the members purchase shares of stock in a corporation which owns all property. Stock ownership entitles members to lease a unit. These are not common in Colorado.

AUTHORITIES AND RESPONSIBILITIES OF THE BOARD OF DIRECTORS

The governing documents of most community associations provide the following authority, duties, and responsibilities for the board:

- The board is elected by the owners/members of the community.
- The board elects and directs the officers: The board makes broad policy decisions and the officers are given the authority to carry out these decisions. In many cases, the officers will be the same person as the directors.
- Like a major corporation, the board of directors will determine how monies are spent, hire and fire employees and contractors and take care of a broad range of responsibilities for the community. This is done without a vote of the members.
- - The board of directors is charged with management of the association which includes:

1. running the business affairs of the association,
2. establishing a budget,
3. establishing good governance policies as required by CRS. § 38-33.3-209.5,
4. establishing and enforcing rules and regulations for the community and how these are enforced,
5. employing an accountant,
6. employing an attorney,
7. employing a manager/management company,
8. employing necessary personnel for maintenance and repair,
9. coordinating physical maintenance of the common areas, including the timing, scope and type of maintenance; and
10. other responsibilities and policies.

LAWS WHICH REGULATE THE ASSOCIATIONS

1. Federal Law. There are a number of federal laws that impact Associations regularly. Primarily, the Federal Fair Housing Act, the FCC Over the air radio devices “OTARD”, and occasionally ADA but not often. While other federal laws often come into play they are not a regular occurrence.
2. State Law. There are again a number of state laws which regularly impact Associations. Primarily, Colorado Common Interest Ownership Act, “CCIOA”, the Non Profit Corporation Act, and for condominiums, the Colorado Condominium Act are the state laws which impact Associations, however numerous other laws will fit unique situations that may arise in Associations

DOING YOUR JOB – SAFETY NETS

Being on the board of directors of your community association can be both a gratifying and frustrating experience. It also brings a risk of personal liability for your actions and decisions. Often, the only qualification required to be a community association director is that you bought a home in the community some time before the association’s annual meeting. However, while association directors assume the same responsibilities and liabilities of directors of other non-profit corporations, as volunteers, you do have the same protection. Four different types of “safety nets” can help protect directors and officers from liability.

In a nutshell, the board of directors is charged with managing the community and running the affairs of the association to preserve, protect and enhance the value of the homes in the community.

The Business Judgment Rule. In exercising these powers, association directors owe a special two-part duty: a duty of care and a duty of loyalty. The duty of loyalty is a duty to put the interest of the association above your personal interests. This duty forces you to make some hard decisions. It requires you to establish a budget that realistically meets the community’s

anticipated expenses, even if it would be a burden for you to pay higher assessments. It also requires you to enforce the protective covenants uniformly against all owners, including your friends.

The other part of the board member's duty, the duty of care, requires you to act in good faith, with the diligence, care and skill of the ordinary prudent person in the same or similar circumstances. This standard is commonly known as the business judgment rule. What is important to remember is that this duty of care does not require that you be blessed with unique talents.

Rather, the business judgment rule requires you to make informed decisions. It requires the exercise of common sense. You must have enough information on issues to enable you to act in the association's best interest. This requires attendance at board meetings and a review of materials submitted to the board. It also requires you to request and receive enough information on which to base your decisions. If a report does not make sense or is incomplete, you should ask questions and receive additional information. Most importantly, recognizing that no one is an expert in everything, the business judgment rule requires the board of directors to seek help from professionals on issues beyond the scope of your expertise.

1. The Colorado Revised Non-profit Corporation Act and Limitations of Liability for Board Members. Another safety net that boards may want to consider to limit the Board's liability is an amendment to the association's Articles of Incorporation as permitted by Colorado Law to limit personal liability of directors. In response to uncertainties concerning the personal liability of directors, Colorado law permits an association in its Bylaws to eliminate or limit personal liability of a director to the corporation or its members for monetary damages for breach of the director's duty of care or other duty as a director, subject to certain specified exceptions. These exceptions include: (1) appropriation of any business opportunity of the corporation in violation of the director's duties, (2) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, (3) any transaction from which the director receives an improper personal benefit and (4) certain situations regarding conflicts of interest.
2. Corporate Indemnification. Another potential safety net for the association's board of directors and officers is an indemnification provision. An indemnification provision is often located within the association's Bylaws. This provision should be checked to assure that it is up to the maximum allowed by state law.
3. Director's and Officer's Insurance. If you serve on your association's board of directors, you know how demanding and rewarding that experience can be. You also know that despite your best efforts and intentions, decisions are not always well-received by members of your community. D&O Insurance is necessary and many times required by the governing documents.

WORK WITH YOUR MANAGER

An effective association manager will guide and lead your board. The association manager brings years of experience gained from dealing with countless similar situations. Accept this knowledge and benefit from it. The board has the final say, but a good association manager will give sound advice which always should be considered.

Take the time to research and educate yourself. Start by reading all the governing documents for your community. Take classes that are offered. Then work with your manager and Association counsel to review any laws that are affecting Association issues and business.

You have to work as a team to move your community forward. Stay cool, calm, and collected. As a board member, you have to deal with some real minutia not to mention difficult people. Unit owners will complain about their neighbor's dog not being on a leash, someone's teenage children, and, yes, even the association manager. Sift through and prioritize these complaints, and you will find your community looks great and property values continue to increase. Focus on the big picture.