



**NOWACKHOWARD**  
COMMUNITY ASSOCIATION ATTORNEYS

# Roles, Responsibilities, Duties and Obligations for Board Members

BY: GEORGE E. NOWACK, JR.

## BASIC RESPONSIBILITIES

- Protect, preserve, and enhance the values and assets of the Association and its members
- Read, understand, and adhere to Association's governing documents
- Where appropriate, select, support, and evaluate the management company or general manager
- Adopt and cause to be implemented policies for the maintenance, administration, and financial well-being of the Association
- Attend and participate in meetings
- Set amount of assessments to ensure adequate resources to meet the Association's purpose
- Oversee resources and finances and ensure financial controls are in place
- Determine the scope of services and monitor
- Enhance the Association's public image
- Act legally and ethically
- Recruit new Board members
- Adopt rules and regulations

## BASIC ROLES

- **Governance** – policy-making, includes defining and differentiating responsibilities of and among the Board, management, and staff
- **Decision Making** – on issues that are strategic and significant
- **Oversight** – is accountability of responsible persons in obtaining objectives; if professionally managed, it is not supervision of day-to-day operations

## LEADERSHIP & MANAGEMENT

- Directors lead by "directing" the business of the Association in adopting policies that reflect the benefits and services to be provided. Directors define objectives and delegate authority to responsible parties to achieve
- If professionally managed, manager or the general manager and staff are responsible for achieving the objectives of the Board within boundaries set by the Board
- Board can delegate authority to act to others but not the responsibility for actions or inactions. (Oversight)

## STANDARD OF CONDUCT

O.C.G.A § 14-3-830 requires a director 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

## LEGAL DUTIES

- **Duty of Care** – must exercise good judgment; includes an obligation to make informed decisions; ignorance is no defense
- **Duty of Obedience** – must comply with the Association's governing documents and act consistent with goals
- **Fiduciary Duty** – must be loyal to the Association and never use position for personal gain or illegal acts; loyalty includes confidentiality

## BEHAVIOR

- Be prepared for meetings
- Understand the difference between governance and management
- Respect fellow Board members and the office of the President, agenda, rules of order
- Respect confidentiality

What you hear, see, or do here, when you leave, let it stay here.

- Recognize you do not speak for the Association without authority to do so
- Do not bad-mouth any person, decision, or action – vote against or register a dissent in the minutes
- Support Board decisions even if you voted against it: Board speaks as one
- Participate not dominate
- Work for consensus and unity
- Disclose any potential conflict of interest

## CONFLICT OF INTEREST

O.C.G.A § 14-3-860

- Arises when an outside influence could affect a director's ability to make unimpeded, independent decision on a transaction which involves a director and the association
- Director has duty to disclose the existence of or a potential conflict
- Transaction must be approved by a majority of the disinterested directors

There is no evil in an association conducting business with a Board member, the evil is in the hiding of a director's interest.

## STANDARD GOVERNING DOCUMENTS

- Declaration of Condominium or Declaration of Covenants, Conditions and Restrictions
- By-Laws of Association
- Articles of Incorporation
- Rules and Regulations

## ENFORCEMENT

- Board has obligation to enforce all of the governing documents
- Methods of enforcement must be specified in a Declaration
- Declaration must expressly authorize suspending right to vote and/or use of amenities, imposing fines, entering property to remedy a violation
- Procedure to impose sanctions must be followed (notice, demand, hearing, sanction) - found in most documents
- If fines are authorized, the amount must be reasonable
- No Association can prevent access to a Unit or Lot
- No Association can evict an Owner

## DIRECTORS LIABILITY

- Board members are not immune from being sued personally
- Board members not personally liable for action or inaction if decisions made in conformance with Standard of Conduct
- Personal liability for breach of fiduciary duty
- Association obligated to indemnify Board members
- Directors & Officers insurance (D&O) should be maintained by Association primarily to pay cost of defense
- Fidelity/crime insurance should cover all persons that have access to funds

## STATE STATUTES AND MOST COMMON FEDERAL LAWS

All Associations in Georgia subject to:

- Georgia Non-Profit Corporate Code (O.C.G.A § 14-3-101 et, seq.)
- Georgia Fair Housing Act (O.C.G.A § 8-3-200 et, seq.) and Federal Fair Housing Act
- Telecommunications Act of 1996 (satellite dishes)
- Soldiers and Sailors Relief Act
- Fair Debt Collections Practices Act if delinquent assessments collected by a third-party

Additional State Statutes

- Georgia Condominium Act (O.C.G.A § 44-3-70 et, seq.)
- Georgia Property Owners Association Act (O.C.G.A § 44-3-220 et, seq.)

## UNIQUE CHARACTERISTICS OF HOMEOWNER OR PROPERTY OWNERS ASSOCIATIONS

- Association owns the common property
- Each Lot Owner has an easement to use the common property for so long as he/she owns a Lot
- The Association owes property taxes on common property
- Communities submitted to the Georgia Property Owners Association Act (POAA) can foreclose on a Lot in arrears at least \$2,000
- Covenants in communities created before 1994 are subject to expiration
- Covenants in communities created after 1994 or submitted to POAA are not subject to expiration
- An Association not subject to POAA must file liens to secure a claim for delinquent assessments
- An Association subject to the POAA has an automatic lien for delinquent assessments

## UNIQUE CHARACTERISTICS OF A CONDOMINIUM

- Association does not own the common property
- Each Unit Owner owns an interest in the common property
- The legal boundaries of each Unit is stated in the Declaration
- Maintenance responsibilities of an Association and each Unit Owner is stated in the Declaration
- If provided in the Declaration, Association can suspend a Unit Owner's right to vote and use the amenities for failure to pay assessments
- If a Unit Owner's share of common expenses is other than equal, the % interest of each Unit must be stated in the Declaration
- Association must maintain property insurance in an amount sufficient to re-build the Units and common property to condition of original construction
- Association can foreclose on a Unit in arrears at least \$2,000.00
- If provided in the Declaration, if an Association has a judgment(s) totaling at least \$750.00, Association can suspend utilities paid as a common expense
- Delinquent payments automatically become a lien against a Unit

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