

A Volunteer Board + Community Association Documents = Legal Obligations

Why Board Members Must Follow Governing Documents

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As legal counsel for community associations over the last few years, I have been impressed with the many boards of directors of community associations and how seriously they take their responsibility to enforce community association governing documents. However, during a recent committee meeting on this topic, I heard from members of WSCAI that the most calls received by our WSCAI organization are made by homeowners complaining about their boards of directors not taking their positions seriously. Thus, our committee decided an article was needed to explain the reasons why board members must follow their governing documents and the legal obligations that accompany the duties of a volunteer board member.

At the heart of the matter, and of WSCAI's mission, is fostering a sense of community. When the governing documents are enforced fairly and equitably by the board, a community will feel a sense of equanimity that everyone is treated the same under the same set of rules. When members of a community start to feel—rightly or wrongly—that governing documents are enforced on an unequal basis or not enforced at all, the sense of community will break down and ultimately the legal obligations of the volunteer board member will be the topic of discussion, debate and possibly legal action against the board and/or specific board members.

The members of the board of directors have a fiduciary responsibility to the association members to exercise due care in performing their duties, and to act reasonably and in good faith in accord with the best interests of the association. It is critical to understand that when you take on the responsibility of a board member in your community association that you are necessarily taking on a very serious legal responsibility.

Most community associations are legally organized entities under the Washington Nonprofit Corporation Act, Chapter 24.03 RCW. Within the Act, the legislature has defined responsibilities of boards of directors, including the duties of a director of a community association. It matters not that the position is a volunteer position. You are still under the legal obligation of a fiduciary under the law. The fiduciary duty discussed above is promulgated in RCW 24.03.127. You can access the entire Washington Nonprofit Corporation Act on-line at www.leg.wa.gov where all the laws of the State of Washington are available for review.

The fiduciary duty of a board member includes the duty of care in performing his or her duties. For example, the duty of care includes, but is not limited to, reading the community association documents that governs the community, including the declaration, by-laws and rules and regulations. It is your responsibility to read the governing documents and understand their contents so that you can responsibly act as a board member when certain circumstances require it under the community association's governing documents. The responsibilities of the

board of directors include not only a duty to enforce the documents, but to take action to amend the documents so as to keep the documents from becoming obsolete due to the changes in community association law and practice.

While a board's decisions can receive both praise and criticism, a standard of reasonableness will normally be applied towards the decisions made by the board. The "business judgment rule" may determine whether the board acted arbitrarily or capriciously in making such decision.

In the State of Washington, the "business judgment rule" insulates board of directors from liability for a business decision made in good faith. There are decisions by the courts in our state that have found instances where a board did not act in good faith and it was found liable for its decisions. In the case of *Riss v. Angel, et al*, 131 Wn.2d 612, 934 P.2d 669 (1997), the Supreme Court of Washington held that the board of the association did not act reasonably and therefore it was liable for damages to individual home owners because its decision was made without any investigation into the facts and ultimately the board made a decision upon inaccurate information.

However, when a board does act reasonably, it will be protected by the "business judgment rule." For example, in the case of *Schwarzmann v. Association of Apartment Owners of Bridgehaven, a condominium*, 33 Wn. App 397, 655 P.2d 1177, the Court of Appeals of Washington upheld the trial court's finding that there was no evidence of bad faith or improper motive which would demonstrate that the board members breached a duty owed to the unit owners.

A responsible board member will read and understand the source of a board's authority for best practices in rule enforcement that is fair and equitable. A responsible, informed board that enforces its governing documents with equanimity will naturally foster a sense of community. And a sense of community is at the heart of why most homeowners choose to live in a community association setting. For more information on understanding your role as a responsible board member, contact WSCAI and learn about the many educational seminars specifically tailored to new and experienced board members alike. ♀



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