

# Best Practices For Homeowner Association Directors and Boards

Written By **Eric J. Remington** (ejr@wardandsmith.com)

April 4, 2018



**Approximately 65 million Americans reside in a subdivision, condominium complex, or other planned community which is governed by a community association.**

The typical community association is governed by a board of directors comprised of volunteers who are elected by their fellow owners. The directors manage the corporate affairs of, and set policy for, the association, and as a result, they often become the main focus of dissatisfied members. This can lead to directors being sued individually for failing to fulfill their duties to act in the best interest of the association, its owners, and directors.

As a result, associations often encounter a lack of interest and willingness of members to serve on their board. However, if a board and its directors follow a simple set of best practices, they can avoid many problems and thereby encourage community members to serve on the board. These practices benefit not only the board and its members, but the community as a whole.

Below are some best practices which should help directors and boards avoid common pitfalls.

## **Be Transparent and Accessible**

The board should communicate frequently, openly, and honestly. Communicating effectively with other directors, owners, and professionals hired by the board to help manage the community is essential. Each board should develop a communication strategy containing, at a minimum, the following elements:

- Publicizing meeting agendas well in advance to all owners and encouraging owners to attend.
- Communicating with owners about current board projects and progress.
- Providing owners information addressing the issues important to them and how the board intends to address those issues.
- Consistent director attendance at all meetings, with full discussion of all matters on the agenda, and votes, whether in favor or against, on each decision that requires a vote of the directors.
- Posting of minutes of the meetings in a timely manner.
- Providing a method for owners to contact directors outside of meetings.

Communication methods can include: personal contact, informational meetings, printed newsletters, email, social media sites like Nextdoor, or a website. The key goal is to be as transparent as possible and help

owners develop a sense of trust in the board.

## **Be Ethical and Above Reproach**

It's very seldom that a director will consciously act in an unethical manner. But being technically ethical is not enough, alone, to avoid unnecessary conflict and expense. Directors should strive to be above reproach and affirmatively avoid actions and comments that might create an appearance of unethical behavior. Each board member should strive to:

- Avoid personal agendas, and apply the provisions of the community's governing documents consistently and without prejudice.
- Make decisions that are in the best interests of the association and the community, even if contrary to the director's individual interests.
- Avoid conflicts of interests or even the appearance of a conflict. A conflict of interest occurs when a director has a direct or indirect personal interest, not shared by all members, in a transaction conducted with the association.

A director has a direct interest in a transaction with the association when the director, or a member of the director's immediate family, has either a material financial interest in the transaction or a relationship with other parties to the transaction that reasonably might be expected to affect the director's judgment in a manner adverse to the association and its members as a whole.

A director has an indirect interest in a transaction when an entity in which the director has a personal and material financial interest, or in which the director is a director, officer, or trustee, is a party to the transaction.

If a director is uncertain if a conflict exists, the director should present all of the relevant information and facts to the other directors, and be prepared to refrain from participating in the discussion of the issue being considered or voting on it.

- Be thoroughly familiar with the laws, rules, regulations, and recorded documents that govern the association. The director should not advocate or support any action or activity that is inconsistent with the rules, regulations, or terms of the governing documents.

By exhibiting sound ethics and integrity, a director can help build the community's trust in the board.

## **Be Reasonable**

A director should always take the director's responsibilities to the community seriously, exercise sound judgment, and not hesitate to rely on simple common sense. Discussions with owners and other directors should be respectful even if the individuals vigorously disagree with one another; and, importantly, but difficult, even when an owner or another director acts with disrespect.

Sound judgment is essential, and is perhaps one of the most crucial assets required of a director. Exercising sound judgment requires a director to think about things clearly, calmly, and in an orderly fashion so that a good decision can be made.

Most importantly, a director should consider all the facts and opinions so that each decision is fair and reasonable under the circumstances. A director should investigate and research issues, and approach problems with a common sense attitude, relying on personal experience and perceptions regarding the

situation or facts. If a topic needs more investigation, research, or discussion, the director must recognize the need and advocate for it. Rash decisions must be avoided—but directors should never over complicate matters that have a clear and simple solution.

In other words, directors should apply their own experience and general knowledge to each situation in order to make the best decision under the circumstances.

### **Be Fiscally Responsible**

Financial stability is essential to the success of an association. A director should always seek to establish sound fiscal policies, help develop a workable budget, and continually look for ways to carry out the purposes of the association in a responsible manner.

A director should seek the advice of professionals such as community association managers, accountants, and financial advisors. The right professionals can assist the board to develop accounting controls to protect the association's assets, realistic budgets which ensure that operating funds are sufficient to cover ordinary expenses of the association, and detailed reserve studies to provide sufficient capital for any future, or unexpected, expenses.

Owners typically do not like increased assessments and demand the board look for ways to cut costs and effectively budget. However, sometimes increased assessments are unavoidable, and if the board can increase assessments gradually and have robust reserves for when inevitable expenses and replacement costs arise, many of these issues can be solved.

### **Conclusion**

Directors of an owners' association play a very important role in the successful operation of the association. A successful director will be open and honest, ethical, reasonable, and financially prudent.

Ward and Smith, P.A. has a dedicated Community Associations Practice Group with attorneys experienced in representing associations, association members, and developers in all matters related to the creation and operation of community associations. We are happy to speak with you regarding these or other topics regarding the operation of your association.

--

© 2021 Ward and Smith, P.A. For further information regarding the issues described above, please contact Eric J. Remington.

*This article is not intended to give, and should not be relied upon for, legal advice in any particular circumstance or fact situation. No action should be taken in reliance upon the information contained in this article without obtaining the advice of an attorney.*

*We are your established legal network with offices in Asheville, Greenville, New Bern, Raleigh, and Wilmington, NC.*