

Condo and HOA Board Members The Basics – What New Board Members Need to Know

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Today's Focus: The Basics

Knowledge of the following topics is essential to being an effective director:

- Laws that Govern Associations
- Governing Documents & Legal Structure
- Board Role & Governance Basics
 - Sources of Authority
 - Using Resolutions
 - Effective Meetings (both Board and Association)
- Liability – Common Trouble Areas

Laws that Govern Associations

Condominiums – Creatures of Statute:

- “Old Act Condos” governed by **Horizontal Property Regimes Act** (RCW 64.32) (1963)
- “New Act Condos” governed by **WA Condo Act** (RCW 64.34) (July 1, 1990)
- Washington Nonprofit Corporate Acts (RCW 24.03, 24.06)
- When in conflict, condo statutes control over corporation acts (RCW 64.34.300)



Laws that Govern Associations, Cont.

Homeowner Associations and CC&Rs:

- Homeowner Associations Act (RCW 64.38)
- Washington Nonprofit Corporate Acts (RCW 24.03, 24.06)
- Real Property Covenants (CC&Rs)

A covenant is a written promise restricting an owner's use of his or her property for the benefit of other property

Similarly burden and benefit each property

CC&Rs normally require an Association be created to administer certain functions such as collecting assessments, budgeting for common expenses, caring for common areas, etc.



That's all of it, right . . . ?

Well, almost. Don't forget:

- The Constitution (oh yeah, that . . .)
- Federal Telecommunications Act (satellite dishes)
- Fair Housing Act/HOPA
 - Housing for Older Persons/55+
 - Disability Access
- Americans with Disabilities Act
 - Reasonable Accommodation
 - Public Areas
- Landlord Tenant Act
- HUD/FHA Project Approval Guidelines
- Others depending on situation

Newsflash: Your community has a user's guide!

Participant discussion questions:

- What is it?
- What's in it?
- Where are they located?
- What is their order of importance?
- Why do you have to follow them?



Governing Documents

Condominiums:

1. Condominium Declaration (Location: Recorded)
2. Survey Map & Plans (Location: Recorded)
3. Articles of Incorporation (Filed w/ Sec'y of State)
4. Bylaws (Location: Assn books, maybe Sec'y of State)
5. Rules, Regulations and Board Resolutions (Loc: Assn)

For #1 - 4, check for amendments!

For Rules, make sure you have the current version with all current resolutions

Governing Documents, Cont.

HOAs:

1. Covenants, Conditions & Restrictions (Location: Recorded)
2. Plat Maps (Location: Recorded)
3. Articles of Incorporation (Location: Filed w/ Sec'y of State)
4. Bylaws (Location: Assn books, maybe Sec'y of State)
5. Rules, Regulations and Board Resolutions (Loc: Assn)

For # 1- 4, check for amendments!

For Rules, make sure you have the current version with all current resolutions

Master Association???

Governing Documents, Cont.

Condominium Declaration:

- Condo formed upon *RECORDING* of Declaration and Survey Map and Plans
 - Why is *RECORDING* important? Because it places purchasers on notice of Dec's contents. Recording generally eliminates the "Well, I didn't read that boring document, so I didn't know that I had to _____" excuse... (RCW 64.34.200)
- Must meet minimum statutory requirements
 - No "standard" boilerplate Declaration
 - Defines Common and Limited Common Areas, Units, Powers of Association -- wide ranging, Amendments, Insurance, & more
 - When in conflict, Declaration trumps Bylaws, but is trumped by Condo Act. (RCW 64.34.216)

Governing Documents, Cont.

Condo & HOA Articles of Incorporation:

- They establish the Association as a corporate entity
 - (required by Condo Act at RCW 64.34.300)
- Very little governance information – intended to be extremely broad
- RCW 24.03.025 states list of topics Articles must contain, including Official Name of Association
- There are nonprofits and mutual and miscellaneous corporations (RCW 24.06). Read your Articles!

Governing Documents, Cont.

Bylaws:

- Normally trumped by Declaration, unless Declaration says differently
- Directors and Officers: Number, qualifications, powers, duties, terms of office, meetings, quorum, and manner of electing and removing
- Delegation to Committees
- Authority of officers to prepare, execute and record amendments to governing docs (subject to Declaration)
- Catch-all: Anything else the Association deems necessary and appropriate

Governing Documents, Cont.

Rules & Regulations:

- Condos - Authorized by Condo Act *UNLESS* declaration provides otherwise. RCW 64.34.304(a)
- HOAs – Authorized by HOA Act *UNLESS* CC&Rs provide otherwise. RCW 64.38.020
- Rules and Regulations should supplement (but not contradict) Declaration, CC&Rs and Bylaws
- Normally contain the day-to-day guidelines that promote good behavior, safety, and Association harmony
- TIP: Look for Declaration or CC&R sections that state something like: “...this section may be supplemented by rules adopted by the Board.”
- Included here are RESOLUTIONS!

Newsflash: Your association will not run itself, and your manager is not a director!

Participant discussion questions:

- How does a corporation take action?
- What is a board of directors?
- What actions may a board take? Why?
- What is the board's role, and what roles do board members play within it?
- Is there a difference between a director and an officer?
- May a director vote by proxy?

Board Roles, Duties and Responsibilities

- The Board of Directors is the control group of a corporate entity.
- Board Role Generally – Administer the association on behalf of its members; act in the best interests of the association.
(Shareholders are the owners of Lots/Units).
- The Articles of Incorporation should list the purpose for your association's existence.

Board Roles, Duties and Responsibilities, Cont.

Board Roles:

- Maintain, repair and replace common areas
- Collect assessments, pay bills, save for reserves
- Insurance
- Govern
 - Enforce governing documents
 - Follow governing documents

Question: Any others you can think of?

Board Roles, Duties and Responsibilities, Cont.

- **KEY POINT:** *Know which actions are reserved to members.*
- Discuss the following examples:
 - Declaration/CC&R amendments?
 - Adopting rules? Adopting Bylaw amendments?
 - Hiring a landscape contractor? Manager?
 - Electing Directors?
 - Removing Directors?
 - Filing a lawsuit?
 - Removing Officers?
 - Borrowing \$\$? Making repairs?

Board Roles, Duties and Responsibilities, Cont.

Board Duties – Condos:

- Govern the Association consistent with duty of care to “...act in all instances on behalf of the association . . . the officers and members of the board of directors are required to exercise ... *ordinary and reasonable care*” **RCW 64.34.308(1)**
- *Fiduciary duty* for Declarant as member of the board, and for Declarant-appointed board members. *Id.*
- Authority to establish policies and supervise their implementation. Often have a right to enter individual units in emergencies, and to maintain and repair common elements.

Let your documents be your guide!!

Anyone see the word fiduciary?

Board Roles, Duties and Responsibilities, Cont.

Board Duties – HOAs:

- Except as provided in the association's governing documents or this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors shall exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 24.03 RCW.
RCW 64.38.025
- Many different schemes. Directors should look to CC&Rs in conjunction with RCW 64.38.020 for specifics.
- Business Judgment Rule – Duty of Care, Duty of Loyalty

Governance Basics

Step 1: Identify Action or Issue

Step 2: Read your Governing Documents

Step 3: Attempt to follow your Governing Documents

Step 4: Repeat

As a Director, you should endeavor to follow your Association's Governing Documents.

Governance Basics, Cont.

Board Meetings:

- Do you need a meeting?
 - Meetings are not necessary for information dissemination or sharing
- Are you ready for a meeting?
 - Do you have necessary info? Notice? Quorum?
 - Do you need input to move forward?
 - Does anything need to be done before meeting?
 - Agenda adequate? Time allotments? Identify presenters? Time for owner input? Executive Session?

**ROCKY SHOALS PARADISE VALLEY TRAIL
COMMUNITY COUNTRY CLUB CONDOMINIUM
UNIT OWNERS ASSOCIATION**

At a **regular** / **special** meeting of the Board of Directors of the Rocky Shoals Paradise Valley Trail Community Country Club Condominium Unit Owners Association (the "Association") held on the ___ day of _____, 2012, at the time of ___a.m./p.m., at the location of _____, the Board states as follows:

WHEREAS, a meeting of the Board of Directors was convened as set out above;

WHEREAS, the Association Secretary, by signing this Resolution, attests that all Board members were provided notice consistent with Section _____ of the Bylaws, or by their attendance waived notice, and that a quorum of Board members was present for the meeting either in person or by conference telephone;

WHEREAS, the Board and the Association's manager have received and reviewed written complaints and photos of tenants hosting dog fighting events in the cabana area;

WHEREAS dog fighting is illegal, dangerous, causes damage to the cabana, and increases insurance premiums. It is not in the Association's best interests;

WHEREAS, the cabana is a common area, and under Declaration Section__ the Board is empowered to adopt and enforce reasonable rules and regulations regarding the use of the common areas. Under Section __ offensive activities may be restricted;

NOW THEREFORE, the Board resolves as follows:

BE IT RESOLVED that a new rule is hereby adopted:

- Dog fighting is prohibited at the condominium.

BE IT RESOLVED that the Rules and Regulations shall be updated to reflect this rule, and the rule shall become effective 5 days after copies are mailed to owners;

Adopted this ___ day of _____, 2012

Governance Basics, Cont.

Association Meetings:

- Condo Annual and Special Meeting

How may a meeting be called?

Notice must be *hand delivered or mailed* to the address of each owner and any other owner-designated address.

- HOA Meetings

Notice to owners must be hand delivered or sent via first class U.S. mail 14-60 days in advance of meeting. Notice must contain certain info. See RCW 64.38.035.

- Quorum

Condo: 25% present in person or by proxy *at start of meeting* unless the Bylaws or Declaration provide a different standard. RCW 64.34.336 (WCA)

HOA: 34% present in person or by proxy at start of meeting unless the governing documents specify a different percentage RCW 64.38.040
(HOA Act)



Common Trouble Areas

- Meetings
- Budgets
- Records
- Committees
- Warranties & Defects
- When to seek legal advice

Q & A



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