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You've Got the Power – Use it Wisely

Association Board Member Powers and Duties

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Overview

- Governance Legal Concepts
- Legal Standard of Care
- Two Hypotheticals
 - #1: Angel Alice v. Boozer Bob
 - #2: Z's Palatial Mansion
- Board Roles & Functions; Meetings:
Recordkeeping
- Questions

Governance Legal Concepts: Overview Group Discussion Topics

- What is an Association and why do you need one?
 - Common Areas, insurance, to carry out legally imposed duties
- What is a Board of Directors?
- What is the Board's role within an Association?
 - Certain Association powers and functions are reserved to owners; the rest are exercised by the board

Governance Legal Concepts:

Governing Documents

- Accurate nomenclature helps avoid confusion
- Recorded Declaration, CC&Rs, Survey Maps
- Articles of Incorporation
 - Name, Purposes, Duration, Assets on Dissolution, Indemnity, Agent, Incorporator, Initial Directors
- Bylaws
 - May contain any provisions for regulation and management of the affairs of the corp. not inconsistent with law or the articles
- Rules, Regulations & Board Resolutions

Governance Legal Concepts: Sources of Authority

- Statutes
 - Condo Act (RCW 64.34), HPRA (RCW 64.32), HOA Act (RCW 64.38), Nonprofit Act (RCW 24.03, 24.06), Foreclosure (RCW 61.12, 61.24), many more...
- Common Law
 - State Appellate & Supreme Court decisions;
Federal Court decisions
- Governing Documents

Legal Standard of Care

- *Fiduciary Duty* is a legal term defined as:
“A duty of utmost good faith, trust, confidence, and candor owed by a fiduciary (such as a lawyer or corporate officer) to the beneficiary (such as a lawyer’s client or a shareholder); a duty to act with the highest degree of honesty and loyalty toward another person and in the best interests of the owner person.” Blacks Law Dictionary, 8th Ed. (2004)
- Do you have a fiduciary duty as a board member?

Legal Standard of Care, Cont.

- Legal duty of Directors and how to discharge them?
 - New Act Condominium:
 - If elected by unit owners, *ordinary and reasonable care*
 - If appointed by Declarant, *the care required of a fiduciary*. RCW 64.34.308(1)(b)
 - Old Act Condominium:
 - Same as New Act Condos unless Declaration specifically requires different standard. RCW 64.34.010(1)
 - HOA:
 - Must exercise the degree of care and loyalty required of an officer or director of a nonprofit corporation. RCW 64.38.025

Legal Standard of Care, Cont.

- Tips on how to meet a Director's legal duty of care
- General Concepts:
 - Under Business Judgment Rule, it is possible to avoid liability if board decisions are within authority of association and made without bad faith or corrupt motive. But, case law suggests directors' decisions must also be reasonable. *Riss v. Angel*, 131 Wn. 2d 612, 632.
 - A director must act with such care as a reasonably prudent person in a like position would use under similar circumstances. *Id.*
 - Be informed! Do your diligence!
 - Directors may rely on information, reports, opinions and statements from officers or employees reasonably believed to be reliable, and from counsel, CPAs and other experts. RCW 24.03.127
- Duty of Loyalty

Hypotheticals

#1: Angel Alice v. Boozer Bob

#2: Z's Palatial Mansion

Board Roles and Functions

- Let your Governing Documents be your guide
- Governance
 - Meetings, Elections, Committees, Rulemaking
- Enforcement
- Oversight, Administration and Management of Assets
 - What assets does your Association own?
 - What assets is your Association responsible for maintaining, repairing and replacing?
 - Where does a common element end and a unit begin? What about limited common elements?

Conducting Board Meetings

- Providing Notice & Achieving Quorum
- Conduct and Deliberation
- Executive Session
- Resolutions
- Open Meetings
- Enforcement Hearings

Recordkeeping

- Minutes
- Book of Resolutions
- Confidentiality Issues

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