

## **Duties and Responsibilities of a Board Member**

We received an inquiry recently from a newly elected board member as to the duties and responsibilities of a board member and an officer of the Association. It is excellent timing as many associations are starting out the New Year with newly elected members serving as the board and officers. It is extraordinarily important to know and understand that by accepting a board position, you are accepting a real, legally binding responsibility for which there may be consequences of actions taken by the Board either as a group or individually.

The association acts through its officers and agents. The board of directors makes the policies for the association, but the officers and agents carry out these policies and administrative functions for the community or oversee those activities if a professional management company has been engaged for that purpose. Some of the officers are merely clerical or ministerial, while others carry out substantive functions based on the policies established by the board of directors. All officers of the Association have an affirmative obligation to act with the utmost good faith towards the association business.

Each association must have at a minimum a president, a secretary and a treasurer. In most instances, the Secretary may also hold office as the Treasurer. Only the President may not hold more than one office. Collectively, the officers will perform duties established in the bylaws and either carry out those duties personally or cause to be carried out the management responsibilities of the corporation under the policies approved by the board of directors through a management company.

While the Board members are elected by the members or population of the community, the officers are elected by the members of the board. This election is generally held at an organizational meeting called to take place immediately following the annual meeting or within a specific period of time after being elected either by the statutes of the state or the documents for the community. A majority vote of the whole board is required for the election.

**President:** The president of the association is vested with all the powers generally given to the chief executive officer of a corporation. While specific bylaw provisions may vary the president's duties, it is generally presumed that he or she will preside at all meetings of the board and the membership. The president will execute contracts, orders and other documents in the name of the association as its agent. When signing documents, the president should indicate the capacity in which he or she is signing to avoid any personal liability since the president's signature, under most circumstances, will bind the association.

The president also assumes general charge of the day-to-day administration of the association or oversees that it is carried out and has the authority to authorize specific action in furtherance of the board's policies. As chief executive officer, the president serves as spokesman for the board of director in most matters relating to general

association business. Like all officers of the association, the president has an affirmative duty to carry out the responsibilities of the office in the best interests of the association. The president serves at the will of the board of directors and can be removed with or without cause at any time by majority vote of the full board.

The president cannot, without specific board approval, borrow funds in the name of the homeowners association or otherwise act beyond the scope of the authority set by the governing documents and board of directors. The president does have the inherent authority to appoint committees to advise him and to advise the board.

**Secretary:** The secretary of the association is responsible for keeping and maintaining or causing to be kept, a record of all meetings of the board and membership and is the custodian for most of the official records of the association. The position of secretary is not simply a clerical position. This office is responsible for either directly or indirectly acting as the custodian of the records, filing corporate annual reports, is the custodian of the "corporate seal". Any legal document executed on behalf of the association requires the signature of the President and to be attested by the Secretary. These would include Resolutions, Amendments, official notices, etc.

**Treasurer:** The treasurer is the custodian of the funds, securities and financial records of the homeowners association or oversees those actions taken by the entity designated to actively maintain those records. It is the treasurer's responsibility to insure that the financial records and reports are properly kept and maintained. Unless the bylaws otherwise specify, the treasurer is responsible for coordinating the development of the proposed annual budget and for preparing and giving the annual financial report on the financial status of the homeowners association.

The treasurer does not have the authority to bind the association or the board of directors in dealings with third parties unless the board has provided express authority for the treasurer to do so. As with the association's secretary, the treasurer does not have to actually perform the day to day record keeping functions or the homeowners association, but the treasurer will ultimately be responsible for insuring that the financial records of the association have been maintained properly in accordance with good accounting principles.

**Vice President:** the vice president of the association is vested with all of the powers which are required to perform the duties of the association president in the absence of the president. The vice president does not automatically possess inherent powers to act in the capacity of chief executive, and may act for the president only when the president is actually absent or otherwise unable to act. The vice president may assume such additional duties as are defined by the board of directors.

In many communities, the vice president will be assigned specific areas of responsibility which may include the grounds and buildings, the recreational properties, or other association activities. The vice president may also be designated to serve as the executive director of the employee manager for the homeowners association, if the association has employees. Each of these duties may be specifically conveyed by the board of directors upon the vice president, and the scope of this authority and responsibility should be defined in writing and placed in the minutes or in the bylaws of the association.

**Registered Agent:** The registered agent is a ministerial office of the association and it is an officer that is required of all corporations by statute. In addition to naming a registered agent, each corporation must also maintain a registered office for the association, although it does not need to be the same as the corporation's main place of business. The registered agent receives all formal service of legal papers on behalf of the homeowners association, including lawsuits. The registered agent is an important link for the corporation since many formal and important communications will be received by this officer. When these communications or documents are received, they must be brought immediately to the attention of the board of directors. The registered agent must be aware of the responsibilities of this office and generally assigns that obligation to either the association legal counsel or the management company.

The name of the registered agent and the street address of the registered office can be changed by the board of directors at any time by simply filing written notice with the appropriate government office. The address for the registered office of the association must be a street address. A post office box is not acceptable. The new registered agent must sign the change in designation, acknowledging and accepting the responsibilities of the position.

**Eligibility and Removal:** Membership requirements are specified in the bylaws of the association. If membership is not a requirement, anyone can run for the board and hold office as an officer. Officers of the association serve at the pleasure of the board of directors unless the bylaws provide for specific terms of office or conditions for removal from the office. The removal of an officer can be done with or without cause when the board feels it is in the best interests of the association. Upon removal from office, the member is still a director. A director can only be removed by the membership.

**Proper performance of duties.** Officers of the association must devote enough time and effort to the performance of their duties to insure that they are reasonably and faithfully carried out on behalf of the association. Officers are presumed to know the duties and responsibilities of the office they are assuming. They must avoid contact which will result in private or personal gain from their position and they must restrict themselves to the cope of duties assigned to them. Officers have an affirmative fiduciary responsibility to the members of the association in the same manner as the members of the board of directors.

They may be liable to the association members for breaches in trust, fraud or negligence. When officers are properly carrying out their duties within the scope of responsibility assigned to them, they may be indemnified by the association and its members when claims or suits are brought against them for their actions. To protect the officers and membership which they serve, the board should maintain "errors and omissions" insurance (D&O Insurance) on each officer and director.