

THE COMMUNITY BUILDER

Board Member Eligibility

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 based on actions taken by the Board either as a group or individually.

Fundamentally, the Directors are elected by the membership. The officers are elected by the Directors from among themselves. The Association acts through its officers and agents. The board of directors determines the operational policies of the association in compliance with both the state statutes and their governing documents. 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. A director and officer has a fiduciary relationship to the members of the community.

Each association must have at a minimum a President and a Secretary. Any official documents must be executed by the President and attested to by the Secretary. In many instances, the Secretary may also hold office as the Treasurer. Most often, the President may only hold one position as an officer, but there are exceptions to that rule. Collectively, the officers will perform duties established in the bylaws and either carry out those duties personally or cause them to be implemented and carried out by delegation to a management company. While the Board can delegate the implementation of policies and procedures they have adopted to facilitate the daily management of the association business to the management company, they can never delegate their authority or responsibility.



THE COMMUNITY BUILDER

The Association's Bylaws will provide specifically the Powers and Duties of the Board.

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".



THE COMMUNITY BUILDER

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 of the homeowners association, but the treasurer will ultimately be responsible for ensuring 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,



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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.

