

THE COMMUNITY BUILDER

New Board Member Guidelines

Registered Agent are a crucial part of the operation.

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 (generally denoted as ownership of a home or unit) 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 and remains on the board. A director can only be removed by the membership who voted them into office.

Additional Officers: Many times the documents will address the appointment of additional officers such as 2nd Vice President, Assistant Secretary, Assistant



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Treasurer, if provided by the documents, they are a valid Officer. But these officers are NOT directors and have no voting power.

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. It should be noted however, that if the Board or an individual Director acts in bad faith, or with willful disregard for the Association, it may be determined that the D&O insurance will not cover those acts leaving the Director liable for their own legal costs and representation.

Directors should always seek "safe harbor" when there is a question as to whether or not their actions would constitute a violation of their fiduciary responsibility. This means that they should be consulting with the proper authority or expert as it relates to legal issues, accounting issues, construction issues, etc. in order to have the safe harbor of the professional advice of the expert as protection should any litigation arise as a result of decisions or actions the Board has taken.

