



HOA-101 ACADEMY

Board Refresher

Presenter Bios



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Goals for Today's HOA-101 Academy



- Not here to bore you with one in-depth topic. We will cover LOTS of info!
- Equip you for success both as new and seasoned board members.
- Add new tools to your toolbox = Increased confidence!
- Hit on key issues and topics we see daily.
- We are here for YOU!!!
 - Take notes.
 - Stop us.
 - Be engaged - Ask questions.
 - This event is for you!!



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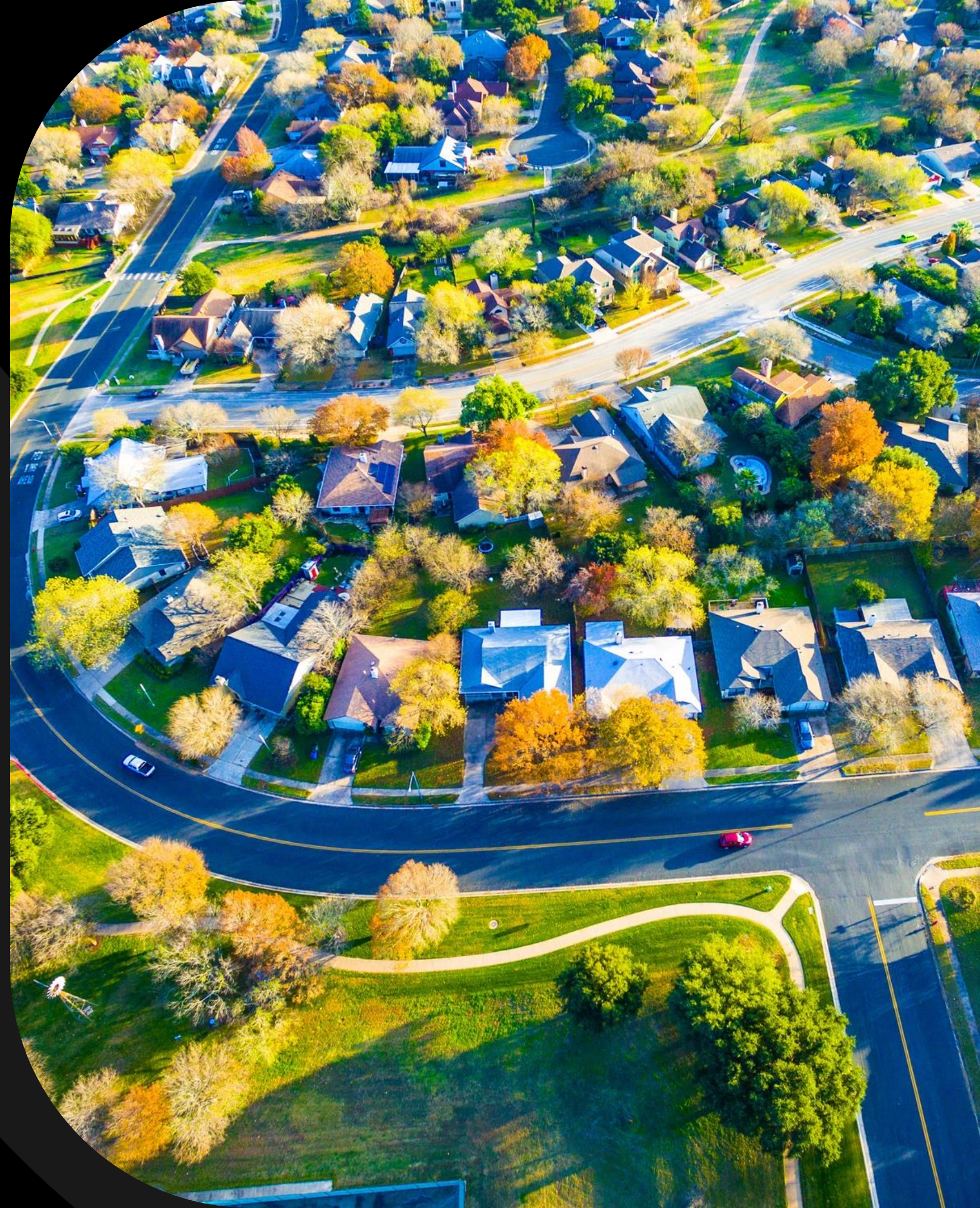
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So What's an HOA?



Association-Governed Communities



Association-Governed Communities

Now, let's start from the beginning by answering a couple of basic questions:

1. What are common-interest developments?
2. Why do we have homeowners associations?
3. Are homeowners associations governmental entities or private corporations?



WHAT ARE COMMON-INTEREST DEVELOPMENTS?



Common Interest Developments in Texas

There are two basic forms of Common Interest Developments under Texas law:

1. Subdivision Developments; and
2. Condominium Developments.



Subdivision Development

The term “Subdivision” generally refers to:

- the division of a tract or parcel of land into two or more Lots or other divisions of land for the purpose of sale or of building development;
- each Lot constitutes a separate, exclusively-owned parcel of real property.
- the other real property involved is common area property the HOA owns, maintains, and insures as a matter of contract (i.e. Declaration/CC&Rs) and generally as required by a town’s ordinances governing residential developments.



Creation of a Subdivision Development

A Subdivision Development is generally created by the subdivision of a large tract of land by a real estate developer, who divides the tract into:

1. separate, individually-owned Lots that are to be owned by homeowners;
2. “common areas” that are to be owned by a Homeowners Association made up of and for the benefit of the lot owners; and
3. streets to provide the owners access to their Lots.



WHY DO WE HAVE HOMEOWNERS ASSOCIATIONS?



Subdivision Development

A Subdivision Development is generally created by the subdivision of a large tract of land by a real estate developer, who divides the tract into:

- Subdivision Associations own the Common Areas on behalf of and for the benefit of the lot owners.
- As the owner of the Common Areas, the Subdivision Association is responsible for its maintenance.
- Collect assessments used for the maintenance, upkeep, and insuring the Common Areas.
- Serve as an enforcement tool for the deed restrictions.



WHAT IS A HOMEOWNERS ASSOCIATION?



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Association -Governed Communities

A Homeowners Association is:

- a private organization made up of Lot Owners in a Subdivision Development or Unit Owners in a Condominium Development; and
- generally vested with the management and maintenance of the community and its amenities or “Common Areas” or “Common Elements”.



Association-Governed Communities

- Association-Governed Communities are created by private agreements that usually take the form of a document entitled “Declaration of Covenants, Conditions, and Restrictions” (or simply “Declaration” for short).
- The Declaration is recorded by the owner of the property (called the “Developer”) in the Official Public Records of the county where the development is located and “runs with the land.”
- The resulting effect is that the property becomes permanently subject to the Declaration, much in the same way as an easement.



Association-Governed Communities

- Each homeowner who purchases a Lot that is subject to a Declaration:
 - is presumed to have notice of the Declaration applicable to his or her property; and
 - becomes obligated to comply with the contractual obligations of the Declaration simply upon acquiring ownership of his or her property.
- This is true regardless of whether the property owner was even actually aware of the Declaration or not.



GOVERNING DOCUMENTS; TYPES & PURPOSES



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Hierarchy of Documents

The recorded map, plat or plan trump any provision in any of the other governing documents.

The terms of the declaration, CC&Rs, master deed or proprietary lease/occupancy agreement trump the articles of incorporation, the bylaws, rules, regulations or resolutions, but are trumped by the map, plat or plan.

The articles of incorporation trump any provision in the bylaws, rules, regulations or resolutions, but are trumped by the declaration and map, plat or plan.

The bylaws trump any rules, regulations or resolutions, but are trumped by the articles of incorporation, declaration and map, plat or plan.

Rules, regulations and resolutions must not conflict with any other governing document.



Types of Governing Documents

Individual documents vary depending on the type of community association in which you live.

Recorded Map, Plat or Plan

Declaration, Master Deed or CC&Rs

Articles of Incorporation

Bylaws

Rules, Regulations or Resolutions



Why Do You Need to Know These?

Why is it important for board members to become familiar with each type of governing document?

- Helps the board to stay legal by knowing what their governing documents require
- Helps board members to answer questions that residents ask (such as the question about Mrs. Jones flying her flag) and those that arise in day-to-day operations



Recorded Map, Plat or Plan

Declaration, Master Deed or CC&Rs

Articles of Incorporation

Bylaws

Rules, Regulations or Resolutions

Recorded Map, Plat or Plan

- Show the precise location of each lot/unit, as well as the common areas
- Plats are recorded with the County
- Provides clarity of who is responsible for sidewalk, fence, etc.
- Concept Plans are submitted to county for approval and may address type and number of plants, mailbox design, or other required assets of the association.



Recorded Map, Plat or Plan



Declaration, Master Deed or CC&Rs

- Establishes the Association Governed Community
- Provide a legal description of the property and describes common areas and amenities
- Govern what owners may, may not or must do with their real estate
- Provides for the establishment of a community association and protocol for levying assessments



Recorded Map, Plat or Plan

**Declaration, Master Deed or CC&Rs;
Proprietary Lease or Occupancy
Agreement**



Articles of Incorporation

- Creates the non-profit corporation that the Declaration calls for that is the “association”
- Define the basic purposes and powers of the association



Recorded Map, Plat or Plan

**Declaration, Master Deed or CC&Rs;
Proprietary Lease or Occupancy
Agreement**

Articles of Incorporation



Bylaws



- Establish governing regulations for the operation and management of the community association on topics, such as
 - Membership and voting requirements
 - Election procedures
 - Powers and duties of the board
 - Provision for indemnification of officers and directors

Recorded Map, Plat or Plan

**Declaration, Master Deed or CC&Rs;
Proprietary Lease or Occupancy Agreement**

Articles of Incorporation

Bylaws



Rules, Regulations or Resolutions



- Establish policies or procedures to resolve or prevent a known problem
- Most declarations give the board the power to adopt rules, regulations and/or resolutions. These are typically initiated as motions to resolve or prevent a known problem and are voted on during meetings.

Examples:

- Pool Rules/Common Area Policy
- Fining/Enforcement Policy
- Collection Policy
- Payment Plan Guidelines
- Architectural Guidelines

Recorded Map, Plat or Plan

**Declaration, Master Deed or CC&Rs;
Proprietary Lease or Occupancy Agreement**

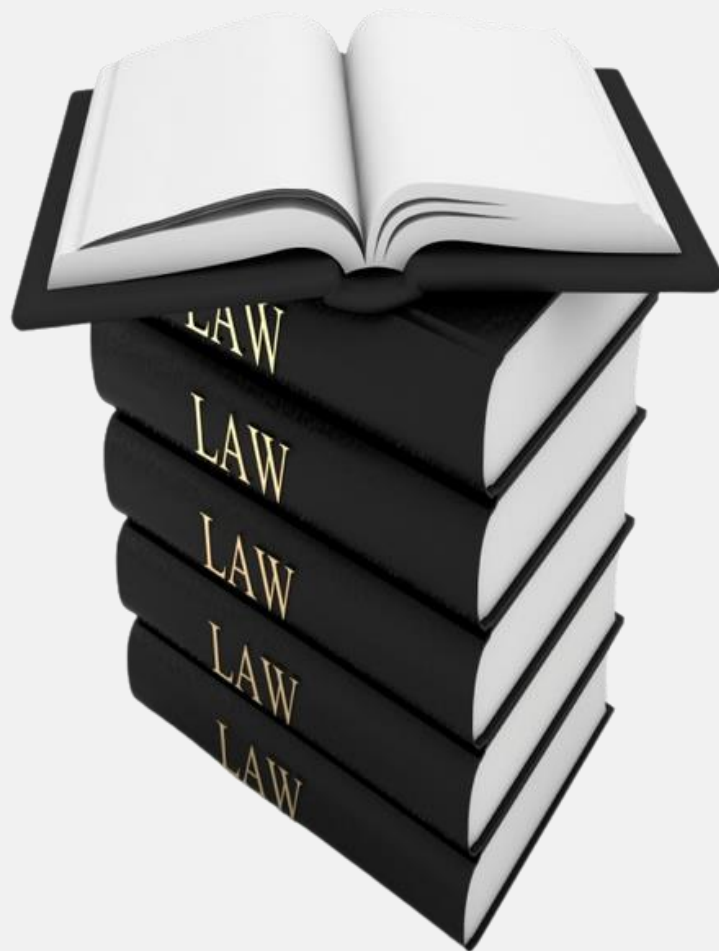
Articles of Incorporation

Bylaws

Rules, Regulations or Resolutions



Governing Documents



Governing documents:

- Provide for the legal structure/operation of the association
- Unless otherwise provided by the statute, governing documents are subject to:
 - Federal laws
 - State laws
 - Case law
 - Local statutes
- What about City & County Codes and Ordinances?



SPECIFIC LAWS APPLICABLE TO TEXAS HOAS YOU MUST KNOW ABOUT!



Key Statutes for HOA & Condos

- HOAs
 - Chapter 209 of the Texas Property Code.
 - Chapter 207 of the Texas Property Code (Resale Certificate).
- Condos
 - Chapter 81 of the Texas Property Code (Pre-1994 Condos).
 - Chapter 82 of the Texas Property Code “TUCA”
 - Applies to Post-1994 Condos.
 - But, some provisions are retroactive and apply to Pre-1994 Condos.
- Both
 - Chapter 22 of the Texas Business Organizations Code (Default Gap Filler).
 - Chapter 202 of the Texas Property Code.
- TIP: State statutes trump governing documents (Declaration, Bylaws, Article of Incorporation/Certificate of Formation), unless the statute defers to the governing documents.
 - Ex. “Unless otherwise provided by the Bylaws, ...”



Don't Want to Bury the Lead

- Legislative Policies you MUST immediately adopt:
 - Management Certificate (Condo & HOA)
 - Fining Policy (HOA but coming for Condos)
 - Document Inspection & Copying Policy (BOTH)
 - Document Retention (BOTH)
- Legislation you MUST immediately comply with:
 - Lien Recordation (HOA)
 - ACC: No Board members on ACC, ACC denial details, Appeals to Board (HOA)
 - Violation Enforcement Hearings (Mini-Trials, no longer just there to hear) (HOA)



BOARD OF DIRECTORS ROLES & RESPONSIBILITIES



Director & Officer Duties

- **No Fiduciary Duties for HOAs!!!**
 - If Director or Officers of condominium, you are a fiduciary.
- Directors vs Officers (One Person; Two Hats)
 - Different Roles & Responsibilities / Same Standard of Care.
 - See Bylaws for specific description of Officer roles, duties, and responsibilities.
 - Duty owed to the organization, not members/owners.
 - Decisions are made by majority vote of the Board of Directors.



Standard of Care - Directors

Sec. 22.221. GENERAL STANDARDS FOR DIRECTORS.

(a) A director shall discharge the director's duties, including duties as a committee member, in good faith, with ordinary care, and in a manner the director reasonably believes to be in the best interest of the corporation.

(b) A director is not liable to the corporation, a member, or another person for an action taken or not taken as a director if the director acted in compliance with this section. A person seeking to establish liability of a director must prove that the director did not act:

- (1) in good faith;
- (2) with ordinary care; and
- (3) in a manner the director reasonably believed to be in the best interest of the corporation.



Standard of Care - Officers

Sec. 22.235. OFFICER LIABILITY.

(a) An officer is not liable to the corporation or any other person for an action taken or omission made by the officer in the person's capacity as an officer unless the officer's conduct was not exercised:

- (1) in good faith;
- (2) with ordinary care; and
- (3) in a manner the officer reasonably believes to be in the best interest of the corporation.

(b) This section shall not affect the liability of the corporation for an act or omission of the officer.

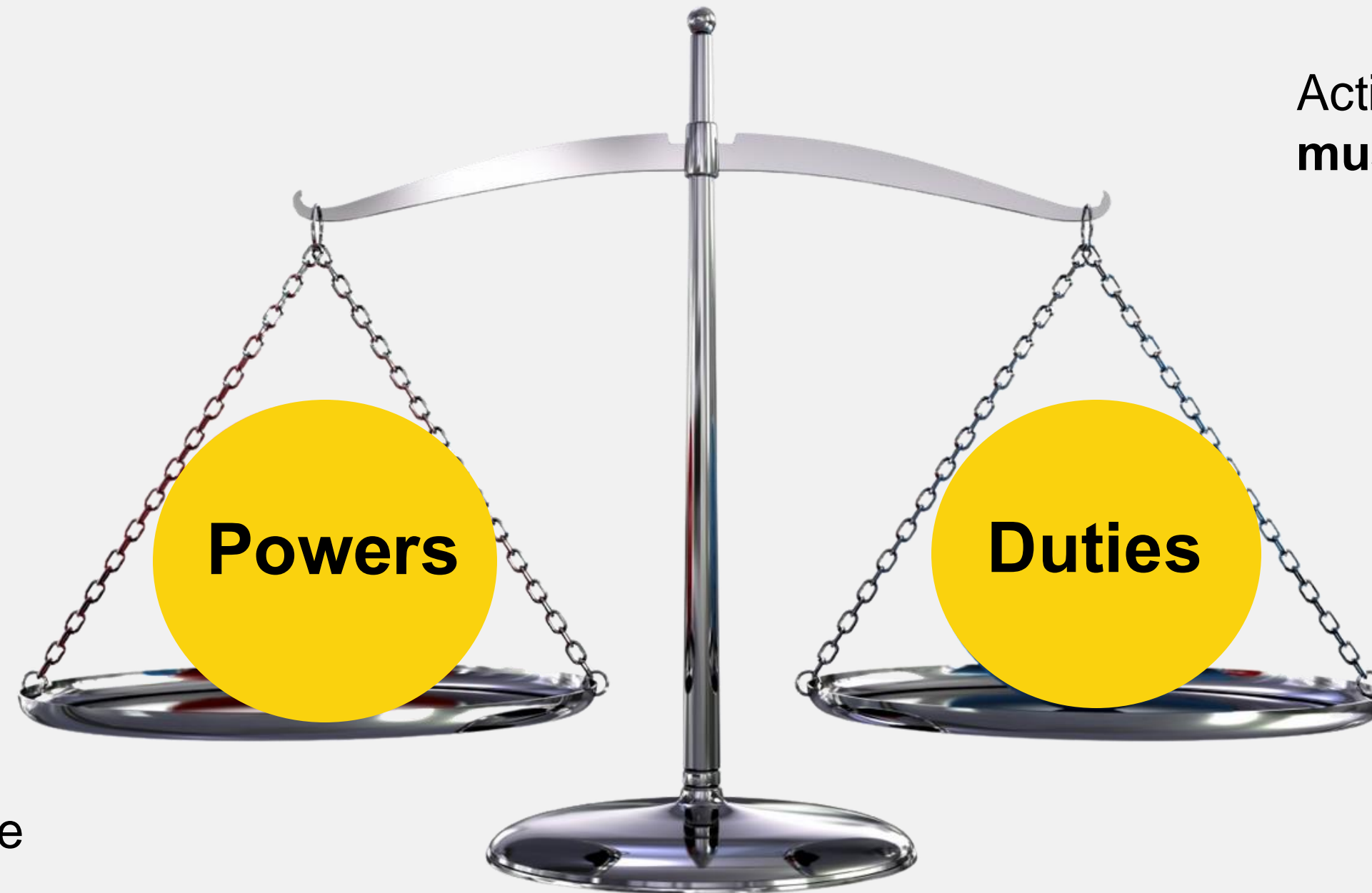


Two Key Standards of Care

- Business Judgement Rule
 - Courts do not review the decisions of community association's directors so long as they act in compliance with the prescribed standard of care.
 - Courts examine the Board's process to make a decision, not the successfulness of the decision.
- "Reasonableness" Standard
 - Reasonableness is based upon the outcome of a decision.
 - The process for making the decision is not under review or scrutiny.
 - Board has burden to prove actions had a reasonable result.
 - This means Courts will impose their beliefs on what is reasonable and will second guess the decisions of the Board.



Board Power & Duties



Actions that the board
must do

Actions that the
board **can** do



Roles & Responsibilities of President

Lead the
board



Preside at
meetings.



Determine
meeting
agenda



Help
prepare
budget



Responsibilities revolve around two primary roles: leader & administrator

Work with
professional
partners



Approve & enter
into agreements



Oversee
committees



Oversee
enforcement
procedures



Roles & Responsibilities of Vice President



Primary role is to substitute for the President.



Make sure the vice president has access to all the information the president has to ensure a seamless transition when the vice president substitutes.

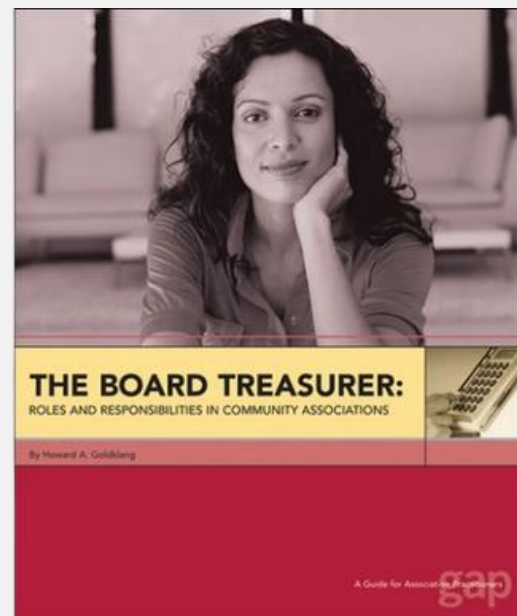
CAI's The Board President provides additional information on the roles of president and vice president.



Roles & Responsibilities of Treasurer

To serve as financial voice of the board and chief liaison to financial specialists

CAI's *The Board Treasurer* provides additional information on the role of treasurer.



Responsibilities include:

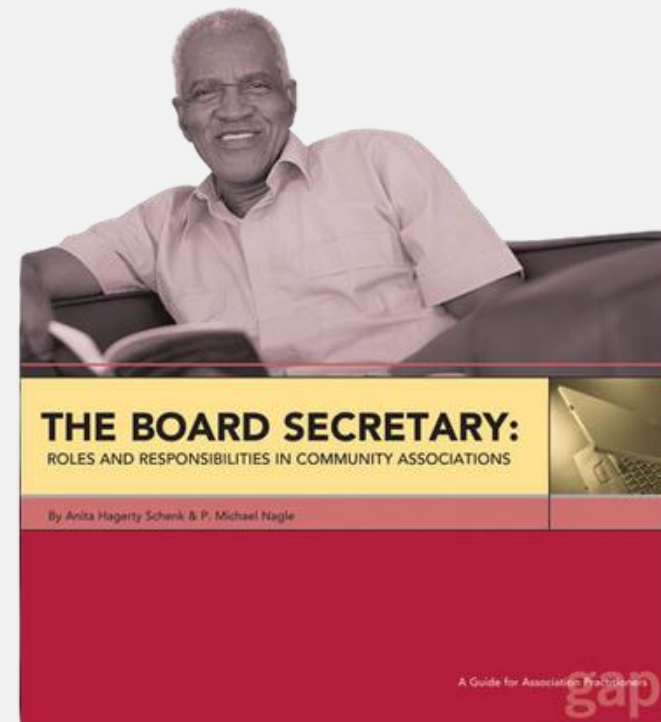
- Approves Invoices
- Works with Community Association Manager on Draft Budget to Present to the Board
- May Sign Annual CPA Engagement for Tax/Audit
- Reviews Draft Audits for Approval
- Provides Financial Overview to the Board
 - Reviews Monthly Financials
 - Provides Treasurer Reports at Board/Annual Meeting
 - Makes Recommendations to the Board on Capital Improvement Projects and Funding Based on Financials and the Reserve Study
 - Partners with Finance Committee for Optimal Success



Roles & Responsibilities of Secretary

Role is to preserve history, maintain records and protect the association from liability.

CAI's *The Board Secretary* provides additional information on the role of secretary.



Responsibilities include:

- Record minutes for all meetings
- Notify members of meetings as required and prepare the agenda
- Collect and maintain association documentation
- Maintain directory of members
- Manage correspondence



How to Practically Discharge Duties and Comply with Standard of Care?

- Read your governing documents
 - Don't be the Board member in a deposition that has to admit to never reading them.
- Rely on the experts:
 - Sec. 22.228. RELIANCE ON WRITTEN OPINION OF ATTORNEY. A director is not liable under Section [22.226](#) or [22.227](#) if, in the exercise of ordinary care, the director acted in good faith and in reliance on the written opinion of an attorney for the corporation.
- Communicate:
 - Biggest complaint is lack of communication and transparency.
 - Board must communicate with the ownership.
 - Hold meetings. Hold town hall meetings. Ask for feedback.
 - Make big decisions at open Board meetings. (Ex. Filing lawsuit, foreclosure, increasing assessments, special assessments, further restrictions)
 - Email blasts. Newsletters.
 - Create a list of most violated covenants and remind owners to comply.
 - (Ex. ACC submittal and approval for new roofs after hailstorm.)
- Communicate as a unit:
 - Board must vote on all communications.
 - No single Board member should unilaterally communicate with ownership.
- Social Media:
 - Can use but be careful.
 - Delete messages? No, do not attempt to control speech.
 - This is why the HOA should not be the administrator of a social media page.



Liability Protections

- 202.004 – Presumption of Reasonableness.
 - Can be rebutted if owner can prove by a preponderance of the evidence that the Board acted in any arbitrary, capricious or discriminatory manner.
- Other Liability Protections:
 - Texas Charitable Immunity Act – Liability protection so long as you are not compensated.
 - Contractual Indemnification (See Declaration and Bylaws).
 - Liability Insurance:
 - D&O, CGL, Excess & Umbrella.
- Written Communications:
 - Discoverable in litigation.
 - Limit number and frequency.
 - Be professional and neighborly.
 - Set up Board only email address.
 - Copy legal counsel (attorney-client privilege).
- Act within Course & Scope of Authority/Duties:
 - Authority is provided in the governing documents and state statute.
 - If the governing documents do not authorize it or prohibit it, no jurisdiction. **DON'T DO IT!!!**



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EFFECTIVE MEETINGS: How Do We Make this Work?



Types of Meetings



Board Meetings
(Regular & Special)



Annual Membership
Meetings



Special Membership
Meetings



Town Hall Meetings



Meetings: Board & Ownership

- Owners Meetings
 - Types: Regular & Special
 - Purpose:
 - Annual = Elect Directors
 - Special = Vote on Declaration Amendment or Special Assessment (or anything the governing documents require Owner approval for).
 - TIP: Must send draft amendment with Notice of Meeting (Special or Annual)
 - Who Calls?
 - Annual = Board must, but statute allows owners to call if Board fails to do so.
 - Special = Called by President, Board, or certain parentage of owners (See Bylaws & State Statutes).
 - TIP: Make sure the purpose of the special meeting captures what is requested and needed.
 - Notice, Quorum & Voting:
 - Notice must state the date, time, place, purpose.
 - Include voting instructions and voting instrument (i.e. proxy)
 - Quorum: See Bylaws or state statute.
 - Voting: Ballot, Proxy, Absentee Ballots, Electronic Ballots for HOAs, only Ballot or Proxy for Condos.
 - KEY: Can only vote on what was noticed. Why? Disenfranchise owners.
 - But what about “Can conduct all other business?”



Board Meetings

- Types: Regular vs. Special
- Purpose: Board conduct business (i.e. vote).
 - Is there a difference in regular vs. special? No, not really.
- Who calls?
 - Board President or certain percentage of Board members. NOT OWNERS.
- Number of Board Meetings Required?
 - No statutory requirement.
 - Check governing documents (i.e. Bylaws)
 - TIP: Generally, no number requirement. Older Bylaws say once a quarter or fiscal year.
 - TIP: Hold frequently, especially when dealing with emotional or hot button issues.
 - Ex. Fines, foreclosure, litigation, increasing assessments, special assessments.
 - Why? Promotes transparency, acts as communication tool, avoids argument the Board failed to comply with state statute (i.e. 209.0051(h)).



Board Meetings

- Workshops or Working Sessions.
 - Legally:
 - Do not exist.
 - Must fall withing 209.0051(h) and not include one of the Magic 15.
 - That said, hold them.
- Notice & Quorum
 - HOA = Must give notice under 209.0051
 - Two issues: How to send notice? What it must include?
 - Mailed, or Posted on Common Area or Website & Emailed (144 hours for Regular/72 hours for Special)
 - Members shall be given notice of the date, hour, place, and general subject of a regular or special board meeting, including a general description of any matter to be brought up for deliberation in executive session.
 - Quorum = Majority of Directors but see Bylaws and State Statute



Board Meetings

- Open Session vs. Executive Session
 - Open Meeting = Default Position (i.e. all owners can attend to listen but not talk).
 - Executive Session = To consider actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications with the property owners' association's attorney, matters involving the invasion of privacy of individual owners, or matters that are to remain confidential by request of the affected parties and agreement of the board.
- Meeting Minutes
 - Take them. Be detailed or vague? Well, it depends.
 - Open Session = The board shall keep a record of each regular or special board meeting in the form of written minutes of the meeting. The board shall make meeting records, including approved minutes, available to a member for inspection and copying on the member's written request to the property owners' association's managing agent at the address appearing on the most recently filed management certificate or, if there is not a managing agent, to the board.
 - Executive Session = Following an executive session, any decision made in the executive session must be summarized orally and placed in the minutes, in general terms, without breaching the privacy of individual owners, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. The oral summary must include a general explanation of expenditures approved in executive session.
 - Outside of a Meeting = Any action taken without notice to owners under Subsection (e) must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special board meeting.



209.0051(h) & the Magic 15

- (h) Except as provided by this subsection, a board may take action outside of a meeting, including voting by electronic or telephonic means, without prior notice to owners under Subsection (e), if each board member is given a reasonable opportunity to express the board member's opinion to all other board members and to vote. Any action taken without notice to owners under Subsection (e) must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special board meeting. The board may not, unless done in an open meeting for which prior notice was given to owners under Subsection (e), consider or vote on:



- (1) fines;
- (2) damage assessments;
- (3) initiation of foreclosure actions;
- (4) initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety;
- (5) increases in assessments;
- (6) levying of special assessments;
- (7) appeals from a denial of architectural control approval;
- (8) a suspension of a right of a particular owner before the owner has an opportunity to attend a board meeting to present the owner's position, including any defense, on the issue;
- (9) lending or borrowing money;
- (10) the adoption or amendment of a dedicatory instrument;
- (11) the approval of an annual budget or the approval of an amendment of an annual budget;
- (12) the sale or purchase of real property;
- (13) the filling of a vacancy on the board;
- (14) the construction of capital improvements other than the repair, replacement, or enhancement of existing capital improvements; or
- (15) the election of an officer.



TownHall Meetings

Examples of purpose:

- Give information
- Garner support for large projects
- Clarify unpopular decisions to settle community unrest
- Get feedback from residents

Board Meetings



Annual Membership Meetings



Special Meetings



Town Hall Meetings



Tips for Productivity



1. Find an appropriate meeting place.
2. Set an appropriate meeting time.

1. Assemble/distribute a meeting packet for each director in advance.
2. Invite experts, as needed, to assist.
3. Insist all speakers address the chair rather than other speakers.
4. Avoid endless discussion; call for a vote.
5. Request that reports be written rather than presented orally.
6. Be committed to starting and ending on time.

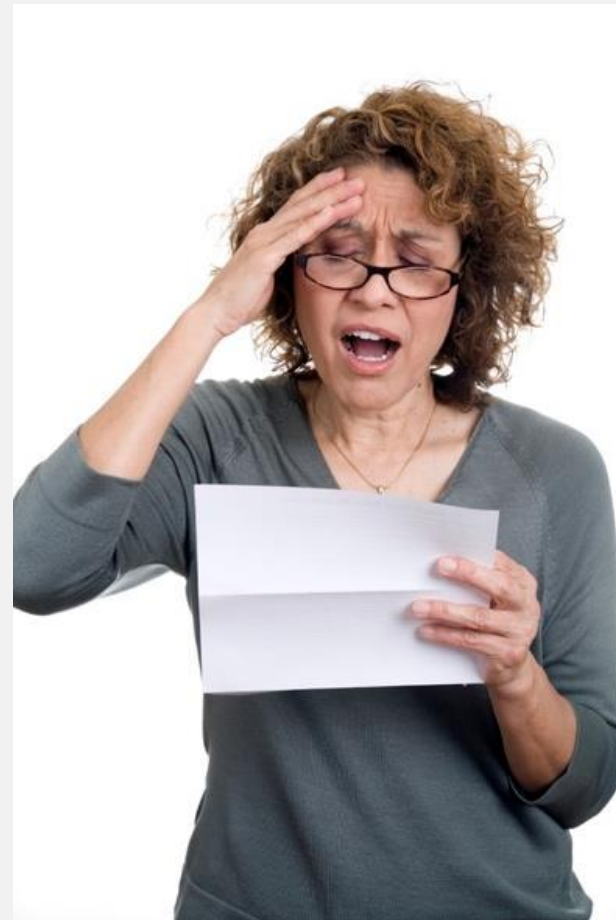


COMMUNICATION



Communication – The Silent Killer

Communication problems could be dubbed the “silent killer of organizational effectiveness.”



A Blended Approach



Integrates technology and traditional methods to increase convenience and communication speed and to decrease costs.

A blended approach may include:

- Electronic newsletters
- E-mail
- Letters/newsletters mailed to those who request printed copies
- Community association website
- Social media
- Automated texts/calls



Frequency



Top complaints residents have are:

- Not receiving information in a timely manner or on a regular basis
- Hearing from the board only about meeting notices or rules violations

What to Do:

- Establish a communication schedule and stick to it.
- Share urgent news that impacts association members in a timely manner.



Cautionary Notes on Methods

- Regardless of the Method, you'll want to be careful with how you use them.
- Make sure your distribution of information reaches the entire population, even if this requires duplication of effort.
- Tailor your communication method to the occasion
- Include ALL Board members on association communication
- Refrain from Voting Online UNLESS absolutely necessary



VOLUNTEERISM



Volunteers are the Heartbeat of your Association

- One in Four Americans Volunteer!
- 40% Volunteer after being asked.
- What motivates one person might have little impact on another.
- Strong arm tactics rarely work in recruiting.
- Remind yourself: Why did I volunteer?
- Tips for Recruiting!
 - Communicating the need in appealing terms
 - Educating to build interest, skills and confidence
 - Promoting community spirit among residents
- Don't Give Up!



Types of Committees

Ad hoc committees are created for a particular, short-term task.



Mandatory committees are those required by the governing documents.

Standing committees are created for an ongoing function and remain in force indefinitely, although the members may change.



Communicating the Need

Communicate the need repeatedly through a variety of channels.

Follow up with personal invitations. People to target include those who:

- Would be a good match
- Have been vocal about how things are done
- Are new to the community



Educating

Building skills and confidence can be addressed through various educational efforts, such as:

- Local seminars
- Newsletter articles
- Online testimonials
- Invitations to sit in on a committee meeting
- Recommended publications
- Online training
- Webinars



Promoting Community Spirit

Create a neighborhood assistance program.

Schedule a poolside movie night or a musical jam session.

Hold a clothing drive to help a local charity.

Host a talent show.



Sponsor a safety seminar.

Print association T-shirts and offer them as volunteer rewards or for sale.

Host a blood drive.



Helping Committees Achieve Optimal Success

Committees are training ground for future board members.



Board members should develop guidelines for the structure, function and responsibility of each committee.

They should:

- Act or follow up on the committee's recommendations in a reasonable time frame
- Publicly recognize and thank committee volunteers



PROFESSIONAL MANAGEMENT Roles & Responsibilities



Why Partner with a Professional Manager?



Reasons for partnering with a professional manager vary widely:

- Size of the community association.
- Lack of time, skills or interests of residents to perform what needs to be done.



Management Company Responsibilities

The management company is a consultant to the Board of Directors to guide them in making decision and fulfilling their duties.

The Management Company Executes the decisions, directives, and policies approved by the Board of Directors.

- Maintains the Association's Records (Sec 209.005)
- Handles Afterhours Emergencies
- Acts a liaison between members and Board
- Ensures that the Board is updated on new legislative
- Maintains HOA websites
- Updates Management Certificate (Sec. 209.004) and Public Information Report
- Updates Resale Packet



Manager Roles & Responsibilities

- Manage the day-to-day operations of the community
- Performance Violation Inspections/Common Area Inspections in accordance with management contract.
- Prepares Meeting Materials
- Attends Contracted Meetings
- Prepares Update (status report on pending task)
- Works with ACC Committee
- Solicits Proposal for Projects, Insurance, and Contracts
- Works with Vendors to Ensure Contract Fulfillment
- Manages Access System
- Tracks Service Contract Terms (i.e., pool, insurance, landscaper)



Professional Management Limitations



What managers should NOT be expected to do:

- Perform duties specifically assigned to the board by the governing documents
- Sign checks over a set amount without authorization
- Waive rules or negotiate with residents about rules without good reason
- Oversee the annual audit
- Serve as the final authority in hiring or terminating contractors
- Initiate the filing of a lien against a homeowner
- Dispense legal advice or other advice outside their areas of expertise



SHORT-TERM LEASING



Short-Term Rentals (STR)

- *Tarr* & Everything After
- Four things we learned from *Tarr*:
 1. “Residential Use/Residential Purpose” **does not** prohibit STR.
 2. Business Use and Corporate Use **does not** prohibit STR.
 3. Can regulate STR via clear language through an amendment to the Declaration.
 4. KEY: Need clear plain language putting all on notice regarding a prohibition or authority, otherwise free and clear with no restriction or authority. Courts narrowly interpret restrictive covenants and favor free use of land. Doubts will be resolved against the HOA and in the owners favor.
- So if your governing documents do not expressly regulate STRs and the length of a lease, must amend the Declaration.
 - Section 209.0041: 67% owner vote to approve amendment unless Declaration establishes a lower threshold.



Short-Term Rentals (Cont.)

- Open question from *Tarr*, is an amendment to the Declaration retroactive?
- Facts: Declaration is silent on STR, owner buys in relying on silence, owner begins renting on short-term basis, and then HOA amends Declaration to ban STR.
- Question: Does the amendment apply retroactively to ban the owner's STR?
- Answer: Yes.
- NOTE: 2nd & 5th Court of Appeals (Tarrant & Dallas) have not ruled on this issue.



VENDOR CONTRACTS: DRAFTING TIPS & ADVICE



Contracts with Vendors

- If long term contract (i.e. landscaper), contract must have termination without cause & without penalty on 30 or 60 days notice.
- If one-off project, consider the following:
 - Retainage & Trapped Funds: Keeps contractor honest & protects if subcontractor not paid and threatens M&M lien.
 - Insurance & Indemnification: General Liability (\$1 Million) with vendor indemnifying HOA.
 - Scope of Work & Standard of Care: Devil is in the details to determine duties and breach.
- Questions:
 - Do you need engineering or architecture plans?
 - Who is monitoring the work?
 - How do we prove a breach?
- Tip: Contract is only as good as the other party. Use a reputable Vendor.
- Bonus Tip: Ounce of prevention is worth a pound of cure. Let legal counsel review the contract up front, not after it is signed and issue arises.
- Bonus Bonus Tip: As a matter of statutory law, \$50,000 contracts must obtain multiple bids.



BANKRUPTCY



Bankruptcy: Its Not As Bad As You Think

- HOA's have single source of revenue – Assessments.
- Bankruptcies will not harm collection; first lienholder foreclosure will.
- So what's the takeaway? Why important?
 - Don't delay in taking collections actions.
 - Communicate with the owner early and often when debt is small – easier to resolve. If debt grows, more likely owner will file for bankruptcy protection.
 - Offer the owner fair and flexible payment plan.
 - Must beat first lienholder to foreclosure or risk getting lien extinguished. If this happens, will not collect.
 - Don't fall for the traps of bankruptcy.



Bankruptcy Types & Why NOT Bad.

- Chapter 7 – Liquidation
 - Typically, last approximately 3 to 4 months.
 - No payments from debtor or trustee on pre-petition debt during the Bankruptcy.
 - Upon discharge the Association's assessment lien stays in place. THIS IS A GREAT THING!!!
- Chapter 13 – Re-organization
 - Typically, can last anywhere from 2 to 5 years.
 - Association will get paid by the Trustee on pre-petition debt pursuant to the Chapter 13 plan, but maybe not in full.
 - Think of Chapter 13 as a really long Payment Plan.



Bankruptcy: Traps & Tips

- Trap 1: Debtor Friendly Bankruptcy Courts.
 - Eastern & Northern Federal Bankruptcy Courts are VERY debtor friendly.
- Tip 1: Agreed Orders. If seek to lift the automatic stay for failure to pay post-petition debt, enter into an agreed order. Court will grant lift of stay but terms will be bad; worse than what you can agree to with debtor's counsel.
- Trap 2: Court is not your friend, but opposing counsel is.
- Tip 2: Debtor's counsel does not get paid to fight. Generally, will agree to favorable terms.
- Trap 3: The Automatic Stay.
 - Broad and punitive. (Ex. Restricting access to pool for non-payment of post-petition debt.)
- Tip 3: Do **NOT** mess with the Automatic Stay. There are separate bankruptcy attorneys that look for technical violations and pursue adversarial claims.



CORPORATE TRANSPARENCY ACT



Do you know about it?

- If not, come see us. Lots to catch up on.
- If yes, do you have a plan?



THANK YOU!!!
Q&A

