

CHAPTER ONE THE DIRECTORS AND OFFICERS

DIRECTORS

Every association is both a corporation and an association and must comply with general corporate law and the statutes relating to their specific structure such as condominiums, cooperatives etc. In the State of Florida, Homeowners Association, (H. O. A)(s) must have at least three Directors, and Condominiums must have at least five unless the condo has five or fewer units then the association can have three Directors.

Unlike general corporations in a community association, the primary duties of their Directors are to function as a Director first and foremost irrespective of any office that may be held by the Director. General corporate law does not require that a Board of Director be a member or a shareholder, as a matter of fact, the pizza delivery person can be a Director and or an Officer of the association, however most association's documents may require not only membership but other requirements such as living on site, etc. Directors serve at the discretion of the membership or shareholder and may be recalled at any time without cause. The law permits the "without cause" provision to limit any potential liability to those initiating and or those causing a directors recall.

More often than not, being a Board member in a community association is a thankless job where the member will spend many hours volunteering his/her time and energy only to be criticized and unappreciated for their time and effort. In our community association pre-licensing book there is a comment in the Insurance section of the book regarding Directors and Officers liability insurance that states: "*Directors are presumed to understand the duties and responsibilities of Directors and Officers*". I always comment that: "*if they knew the duties and responsibilities they would not take the job*".

I truly believe that every new Board member should be required to attend some type of introductory course or the community association managers pre-licensing course. Education is the key to every industry and should be considered by and for the association's Board of Directors. In addition, the Board members could continue their education through various associations and trade schools. Some schools will offer discount and or group rates to Board members.

Duties and Responsibilities of the Directors

The primary responsibility of each Director is fiduciary in nature. Fiduciary defined by the American Heritage Dictionary "Pertaining to Trust" Webster's Dictionary "Holding something in trust for another". Both definitions translated means "acting in good faith for the benefit of the membership."

OFFICERS

General corporate law does not require a person to be a member or shareholder of an association to be an officer, however most association documents will require membership and may require additional eligibility criteria. In a CIRA (Common Interest Realty Association) more often than not an Officer will be both an Association Member and a Director. General corporate law requires corporations to have a minimum of three Officers: **President, Secretary and Treasurer**. (Vice Presidents are optional, however, check the association's documents.)

The association can have as many Vice Presidents as they desire or as may be required by the association's documents. Some associations have other positions such as Chairperson, Co-chairperson, Sergeant of Arms, etc.

All positions on the Board are equally important however each position is unique and has specific duties and responsibilities. Each position is an integral cog in the "wheel". For optimum performance each officer should know his or her duties and responsibilities.

President

Also known as: Chief Executive Officer, Leader, Presiding Officer and Prime Minister. However referred, the duties and responsibilities in a community association can be summed up in a mission statement "***To mold the communities character, enhance the lifestyles of the residents, to protect, and, preserve the association's tangible and intangible assets and to promote social harmony***".

The President will have many additional duties such as:

- Adopt and reiterate the association's mission.
- Lead.
- Nurture diplomatic relations.
- Be strong yet humble.
- Promote both corporate, capitalistic, fiscal responsibility and socialism all in the same breath.
- Assemble a cabinet and committees.
- Create a team spirit.
- Encourage others to participate, even the worse guy on the team.

- Create a master plan.
- Set attainable goals and agendas which are in line with the master plan.
- Calendar events.
- Direct and supervise all activities.
- Be firm yet fair and merciful.
- Delegate task and hold people accountable (diplomatically) (the whip).
- Promote social events.
- Get involved in Local, State and Federal government.
- Either get involved or monitor government politics.
- Contact and co-act with civil servants such as fire and chief of police, etc.
- Promote education.
- Know the association documents, contracts and insurance policies.
- Know the association's members.
- Keep the membership informed and educated.
- Coordinate and orchestrate daily activities.
- Chair Board and or association meetings.
- Co-act with professionals, such as Managers, Lawyers, Accountants. Engineers, Architects, etc.

These are some of the duties of the Presidency and may be overwhelming for some. The position of President requires a special breed of person with a personality that is conducive to the Presidential environment. The association should consider a Presidential candidate not only for their willingness to do the job and their competence level, but the association should also consider the candidates persona.

The President's job is one of diversity and complexities. The President will have to co-act with people of many different socioeconomic, ethnic, religious and moral backgrounds as well as lifestyle behaviors and circumstances.

Some circumstances the President might encounter range from odors caused by a unit owner using pungent spices while cooking, to foreclosing on a property of a dear friend and neighbor. Although the first circumstance might sound silly, it is one that has and continues to happen. Dealing with either of the above circumstances requires tact, diplomacy, empathy, and the ability to resolve the situation according to the rules established by the association.

The President has to make some very difficult decisions that may impact his friends, neighbors and even make decisions that may adversely affect himself and his family. The President has to make decisions based on a holistic benefit for the association. The President is challenged to make business decisions yet preserve the social integrity of the association.

The position of President historically and practically is perceived as a position of power and control and generally this is true. A President can use his power and control for either positive and or negative agendas. The truth of the matter is that the president is not any more powerful nor does the President have any more control than any other Board member. The association members are responsible to monitor their elected officials and to make certain that they are acting for the best interest and on behalf of the association.

Of all the President's duties the six most important are:

- **Obtain and maintain adequate insurance.** Including but not limited to general liability, directors and officers, fidelity bonds, etc.
- **Review the association documents** and propose amendments as needed. The association's documents are the President's main toolbox. If the tools are antiquated or in a state of disrepair the results of the President's efforts will be commensurate.
- **Diplomacy/psychology/sociology:** I am not aware of an Association Presidency school that teaches diplomacy. Diplomacy can be innate or born from ones experiences and or environment. From the psychology side of the equation, the President can access many courses at local colleges and adult education institutions. A good understanding of human behavior and sociology is invaluable when managing a community association.

Again, there are schools that can help the President or any other Officer/Director become more technically proficient.

- **Master plan.** Calendars events, meetings, etc. and sets appropriate agenda.
- **Develops a team** by assigning duties to appointed members to help carry out the intended goals of the community. The president cannot be expected to "know everything about everything" and he or she certainly cannot be effective by taking on too many responsibilities and not having enough time or expertise to accomplish the tasks at hand. An effective President assigns, allocates, directs, and designates for the good of the community.
- **Orchestrates and coordinates activities** between association members, the management company, the association manager, other board members, and with any other individual(s) or companies involved with the day to day activities pertaining to the community as well as any major undertakings (such as road re-surfing, roof replacements, etc.).

The position of President is very important because the president is perceived as the leader and catalyst for the association.

Vice President

The Vice President substitutes for the President when the President is absent or upon the President's request. The Vice President should be able to carry on all duties and responsibilities of the Presidency. This requires being aware of the President's actions, status of master plan and agenda items. On a day-to-day basis, the Vice President will assist the President in the day-to-day operations and may be charged with specific tasks. In addition, it is common for the Vice President to chair some committees and be a specific liaison for specific functions such as liaison between professionals, management, committees, government and will spearhead special projects.

The Vice President should stay informed of the President's agenda, duties and task because the Vice President may have to assume the role of President.

Secretary (a.k.a. chief information officer)

As do all other offices, the Secretary also has corporate as well as association duties and responsibilities. Sometimes an association will outsource some of the secretarial duties such as taking of minutes and record keeping, etc. In addition, some

corporations and associations will have one or more assistant secretaries each having a specific title that clearly defines their task. These titles include:

- **Recording Secretary**
 - Recording and keeping of minutes and all other corporate related documents such as the corporate seal, etc.
- **Corresponding Secretary**
 - Corresponds and keeps track and records of incoming and outgoing correspondence, newsletters, and any other publications.
- **Filing Secretary**
 - Storage and retrieval of the corporate and association's records, insurance policies, contracts, deeds, etc.

The Secretary may have other duties and responsibilities as may be defined in the association's documents, by resolution or as a matter of course. In addition, the Secretary's duties and responsibilities include:

- Information officer
- Systems
- Calendaring of events
- Maintain resident roster and contact database for all residents, vendors, contractors, governmental agencies etc.
- Creation design and maintenance of the association's letterhead, post cards, date stamp, forms, etc.
- Maintain or cause to be maintained the association's office equipment.
- Recording, filing, corresponding. If the Secretary will be corresponding for the Board, the Board should implement guidelines for proof of draft order of priority and what Board members the Secretary will correspond.

Treasurer

The treasurer ("Show me the money") this is basically *the bottom line* no pun intended.

The Treasurer's position is of the utmost importance. If the President is the Chief executive officer and the driver of the car, and if the Secretary is the organizer and logistical supporter, then the Treasurer is the fuel that keeps the association moving toward its goals. The Treasurer's duties are:

- Budget compliance.
- Compile facts and figures for a new budget for the ensuing year.
- Review past financial records.
- Maintain financial records such as aged receivables; check register, financial statements resident roster, etc.
- Implement bookkeeping procedures and monitor them.
- Supervise bookkeeping services.
- Negotiate payment schedules with contractors.
- Invest the association's saving and reserve monies.
- Co-act with financial experts and accountants.
- Implement and manage reserve programs.
- Monitor accounts receivables and co-act with the association's attorney through the collection, lien and judgment process.
- Implement safeguard policies and procedures to insure the safety of the association's funds.
- File corporate reports.
- File or cause to be filed: federal, state and local tax returns.
- Make certain that the required insurance is maintained.

A good Treasurer is an integral part of the Board. A good Treasurer will make a major difference in the solvency of the association.

Committees

Committees, if properly formed and monitored, can contribute and help expedite the association's tasks, agendas and master plan.

Committees within an association are not unlike that of our State and Federal government. The duties that committees may be charged can be generalized as executive, legislative/judicial, and political/social. For example:

Executive committees:

These committees will execute the day-to-day operations of an association. These duties include administrative, financial, legal and operational issues.

Some of these duties include co-acting with professionals, vendors and contractors. Processing incoming and outgoing correspondence, budget conformity, political and social activities range from talking one on one to a constituent at the pool to soliciting support for a specific action or publishing and producing newsletters.

Legislative/Judicial Committees:

These committees process request for rule changes or changes to the Associations documents. They enforce rules and violations through hearing. Theses types of committees also oversee architectural request etc.

Political/Social Committees:

Political and social committees are the tools used to advertise an agenda or specific issue before the Association. These types of committees also process the community's social issues.

To expedite the duties of the Board through committees the Board must decided what specific type of committee should be formed to carry out the duties.

There are three main categories of types of committees: advisory, authority, and rules and violation.

Advisory:

An advisory committee is just that it is designed to be a research and fact finding group. These types of committees can meet anywhere any time without notice so long as the information collected will be brought before the Board of Directors. These types of committees cannot bind the association nor are these types of committees empowered to act on behalf of the Board.

Authority:

These types of committees have the power to act on behalf of the Board as set forth in a formal resolution of the Board. These types of committees must act within the scope of the resolution parameters. These committees are generally authorized to bind the association in specific duties e.g., a Finance Committee may be authorized to move a certificate of deposit when they become mature or to invest funds to optimize the interest returns. These types of committees must meet as if the meeting was a full Board meeting. This includes proper notice, quorum requirements, keeping of minutes etc.

Rules & Violations:

These types of committees are designed to be the impartial judicial body of the Association. Impartial because the members of these committees cannot be comprised of any Board members or family members of the Board, rather these committees should be comprised of association members. These committees are judicial because they conduct formal hearings of rules and violation infractions. The committee suggests rule modifications and addendums, but most importantly, these types of committees will hold hearings and decide whether or not to impose a fine on an Association member. The decision of the committee is final unless the parties opt to go to court or formal arbitration/mediation.

Committees can play an integral role in the successful implementation of the association's "Master Plan" and or in the implementation of directives of the Association's Board of Directors.

Other Committees

Associations can implement other committees such as:

- Maintenance
- Security
- Architectural
- Planning