

Condo Insights

#56 – Fiduciary Duty, Codes of Ethics & Conflicts of Interest

Community, condominium and homeowner's associations are managed by a board of directors elected from among the association members. The board of directors is responsible for decision-making on behalf of the association, including financial decisions.

The governing documents for most community, condominium and homeowner's associations require that board members act in a fiduciary manner. For a board member to "act in a fiduciary manner" means they must always prioritize the best interests of the entire association, putting the needs of the community above their own personal interests when making decisions, and acting with utmost good faith and loyalty to the association and its members.

Association members put their trust and confidence in board members to protect the community's quality of living, use funds wisely, and keep operations running smoothly. Board members are legally obligated to act in a trustworthy and responsible way on behalf of the condo community as a whole. A board member's primary responsibility is to the entire condo association, not individual unit owners, even if their personal opinion differs. Board members must make informed decisions based on thorough research and due diligence and they should openly communicate relevant information to all unit owners. A condo board member's fiduciary responsibility is to help the association succeed while adhering to the governing documents.

Serving on a board typically requires a significant time commitment, involving attending regular meetings, participating in discussions, reviewing documents, and making decisions, which can add up to several hours per month depending on the community's needs and project complexity. The time commitment is substantial, often comparable to a part-time job. In most associations, board members are volunteers although they may be compensated for out-of-pocket costs related to their service, usually regarding travel costs.

Associations may want to consider a written code of ethics for board members. Such a code should include guidelines and expectations for behavior, judgment, authority and transparency. Board members should serve the best interests of the association as a whole; demonstrate sound judgment taking into consideration the available information and circumstances; act within the boundaries of their authority, provide opportunities for association members to comment on decisions facing the association, perform their duties without bias against any owners, guests or employees, disclose personal or professional relationships with any company having a business relationship with the association; conduct fair elections and speak with one voice to support board decisions

Board members should not reveal confidential information or share information unless authorized by the board. Board members should not use their position or authority for personal gain or to seek advantage over another member. Board members should not make promises to a contractor or bidder. Board members should not spend association funds for their personal use or benefit. Board members should not misrepresent known facts about association business or divulge personal information about any association member, guest, or employee nor make personal attacks against anyone involved with the association. Board members should not reveal the discussions, decisions and comments made at any closed meeting or executive session, misrepresent known facts about any issue involving association business nor divulge the terms and conditions of any confidential settlement agreement.

Fiduciary duty extends to other key individuals and entities involved with community, condominium and homeowner's associations, including property managers, management companies and other professionals and agents. Boards hire a management company to provide them with professional management services for their community. They expect a fair and independent advisor to help them make decisions that are in the best interest of their community.

A property manager or management company conflict of interest occurs when the manager or management company has a personal or financial interest that could influence their decision-making in a way that might not be in the best interest of the association, such as when they favor a specific vendor they have a business relationship with, or when the manager or management company owner also owns a unit in the association, potentially leading to biased decisions regarding repairs or fees.

The most obvious examples of a conflict of interest involve vendor relationships; when the manager or management company receives commissions or discounts from a preferred vendor, incentivizing them to choose that vendor over others, even if they may not offer the best price or quality. Another example is when the management company is related to or owns a contractor or service provider providing services to the association potentially leading to preferential treatment. Another involves the management company receiving a bonus based on the amount of money spent on repairs or maintenance, encouraging them to recommend unnecessary work. Gray areas also include management companies having licensed insurance agents or real estate agents on staff.

The condo board should qualify contractors and use an independent bidding process to ensure fair competition. Regular audits can help identify any inappropriate practices or conflicts of interest. Associations can mitigate and minimize the potential for conflicts of interest by requiring full disclosure from management companies of any personal or professional relationships with vendors, board members and employees.

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