

To: New Board Member
Re: Fiduciary Duty

Congratulations on your election to the Board of Directors. The purpose of this letter is to acquaint you with the standard of conduct that is expected of community association Board members. The law imposes certain legal obligations on all Board members. Failure to fulfill these obligations could lead to a lawsuit against the association, the Board, and even you personally. Chief among these obligations is what's called a "fiduciary duty" to the association. This means that you must perform your duties as a Board member in good faith, and with the degree of care that an ordinarily prudent person would use under similar circumstances - being at all times loyal to the association and its best interests.

But, in practice, it gets a little more complicated than that. While it's impossible to review every possible situation you might face, here are some basic guidelines to follow. As a Board member, you must:

1. **Act in the association's best interests at all times.** Your decisions must be based on what's best for the association *as a whole*. Making decisions or taking actions that put the interests of yourself, your friends, or your supporters above those of the association or its members is a breach of your fiduciary duty to the association.
2. **Act with care, including seeking advice from experts when appropriate.** When making decisions or taking actions, you must exercise the degree of care that an ordinary prudent person would under the circumstances. Among other things, this means that if, for example, the Board must make a decision involving an issue that no one on the Board is an expert on, the Board should consult an expert.
3. **Act within the scope of your authority.** Your authority is defined in the association's governing documents, and by applicable state and local law. It's important that you understand the scope of your authority and not exceed it. If a Board action violates the duly adopted By-laws, Declaration, or other governing documents, or state or local laws, the Board may have breached its fiduciary duty - and the action may have to be invalidated. An example of this would be failing to comply with procedural requirements for community elections.
4. **Act in good faith.** Board members' motives must at all times be to further the legitimate best interest of the association. If Board members make decisions based on favoritism, discrimination, or malice - or make arbitrary decisions- they're breaching their fiduciary duty. This does not mean that the Board can't create a rule that affects some members differently from the way it affects others, such as a no-pets rule. It just means that the decision to create the rule must be based on Board members' honest and best judgment of what is best for the association as a whole.
5. Avoid the following four common mistakes. You will have to use your best judgment in determining what your fiduciary duty requires of you in any specific situation. But there are four common mistakes that you should avoid:
 - Don't take *personal* advantage of business opportunities that should benefit the entire community.
 - Don't do business with the association unless you disclose that fact *and* get the appropriate approval to do so.
 - Don't give preferential treatment to friends and supporters, or expect it for yourself from others.
 - Don't accept gifts from vendors or others doing business - or seeking to do business - with the association.

If, after reading this, you have any questions about fiduciary duty or what it requires of you, please contact your Community Manager. You have undertaken an important job in the community, and we appreciate your service.

Source: "CAM Insider", August 2005