

Directors & Their Roles and Standards of Conduct

Directors: The position of a Director is distinctly different from that of an Officer; however, in most HOAs, an individual may hold both positions at the same time. All Directors hold equal status.

The voting at a Board meeting is related to the position of being a Director, not necessarily an Officer.

All Directors, including the President, should vote on matters brought before the Board unless the Bylaws provide differently.

Directors are elected by the HOA Members or may be appointed by the Board to fill a vacancy on the Board. Some Director duties include:

1. To act as a fiduciary to the HOA
2. To exercise proper care in decisions
3. To owe a loyalty to the HOA and Members
4. To act by the governing documents
5. To act in "good faith" and the best interest of the HOA
6. To make reasonable inquiry as for the basis for decisions
7. To seek and rely on the advice of professionals (i.e., management, attorney, CPA, etc.)
8. To make reasonable and unbiased decisions
9. To maintain appropriate confidentiality and attorney-client privilege
10. To remember they have no authority to act or speak on behalf of the Board outside of a Board meeting unless specifically authorized by a proper resolution (a policy) of the Board

Directors' Standards of Conduct

A Director is required to perform "in good faith, in a manner such director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person would use under similar circumstances." This is sometimes known as the "prudent person rule" or the "business judgment rule" (Corporations Code § 7231).

A Director is exposed to liability if the Business Judgment Rule is not followed. More importantly, a Board can take any prudent action within its stated powers, provided such activities are not restricted by law or the governing documents. In reaching decisions, a Director is entitled to rely on sources reasonably believed to be reliable.

Note: An "objective standard" rather than the "business judgment rule" may apply to maintenance and repairs. A court will defer to a Board's authority and presumed expertise in

discretionary decisions regarding the maintenance and repair of an HOA, provided that the decisions are based on reasonable investigation, made in good faith and with regard to the best interest of the HOA and are within the scope of authority given to the Board under the relevant statutes and governing documents. This rule has been extended to architectural decisions, as well as other contexts in both published and unpublished opinions of the Court and is often widely quoted as the standard for most Board decisions.

By following the "prudent person rule," Directors may make decisions that might not always be made in a "command and control" environment. Here are some examples of decisions the Board may make:

1. Not to foreclose on a separate interest if an attorney so advised.
2. To obtain insurance for assets owned as separate interests if the governing documents do not prohibit doing so.
3. To accept a knowledgeable committee's recommendation on landscape maintenance practices.

DISCLAIMER: This sample form and agreement is presented for informational purposes only and should not be relied upon for accuracy, completeness, or consistency with applicable law. The user is advised to check all applicable state and federal law before using this form, agreement, or parts thereof. Because certain forms have legal implications, it is recommended that downloaded versions of this form be reviewed with legal counsel prior to their use and that any modifications made by the user also be reviewed by legal counsel prior to their use.