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What exactly did I sign up for? Legal duties inherent in serving on an association board

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Frequently those who volunteer to serve on an association board do not fully understand the legal duties and responsibilities undertaken by becoming a board member. There is no simple list or itemization of the precepts which govern the proper conduct of board members. Rather, the responsibilities attendant with serving on an association board is case specific and dependent on the facts presented. The Articles of Incorporation, Bylaws and other governing documents of the Association, along with Florida statutory and common law, provide guidelines for board members. Chapter 718 of the Florida Statutes for condominiums and Chapter 720 of the Florida Statutes for homeowners associations include a myriad of rules and requirements, which Boards are required to follow in the administration of an association. They both direct that within 90 days of being elected or appointed to a board, the new board member "shall certify in writing" that he or she has read the governing documents of the Association and that he or she "will work to uphold such documents and policies to the best of his or her ability and that he or she will faithfully discharge his or her fiduciary responsibility to the Associations members". In lieu of such written certification, the new board member may submit a certificate of having satisfactorily completed educational curriculum administered by a provider approved by the Division of Florida Condominiums, Timeshares and Mobile Homes in the Department of Business and Professional Regulation.

Chapter 718 and Chapter 720 specifically provide that the officers and directors of the Association have a fiduciary relationship to the members of the homeowners association and the unit owners in the condominium. The most basic duty is the duty of loyalty, which obligates the fiduciary to put the interests of the association first and to refrain from exploiting the relationship and position as a board member.

The board of directors is generally charged with the responsibility to govern the corporation. Florida Statutes mandate that operation of condominiums and homeowners associations must be by a Florida corporation. Condominium associations can be either for profit or not for profit and homeowners associations must be not for profit entities. Generally, the obligations imposed on directors of not for profit corporations also apply to condominiums and homeowners associations. The role of the board is not to

handle the day-to-day operations of the association - those are typically handled by officers, employees, volunteers or a professional management company. Specific responsibilities of a board vary from one condominium or community to the next, but generally include: (i) strategic planning, (ii) oversight, (iii) setting policy, (iv) selecting, supporting and reviewing the performance of officers, employees and managers, (v) managing resources effectively and (vi) ensuring compliance with statutory obligations. The standard of conduct for directors is essentially that of an ordinarily prudent person. Directors must act: (i) in good faith, (ii) with the care a person in a like position would exercise and (iii) in a manner he or she reasonably believes to be in the best interests of the association. The "business judgment rule" is derived from Florida case law:

"Directors are protected by the business judgment rule under Florida law, no matter how poor their business judgment, unless they acted fraudulently, illegally, oppressively, or in bad faith. Said differently, so long as due care was exercised, the rule protects a "good director" (one who did not act fraudulently, illegally, oppressively, or in bad faith) who made an honest error or a mistake in judgment, but not a "bad director" (one who acted fraudulently, illegally, oppressively, or in bad faith) who made a bad decision."

In conclusion, board members should (i) regularly attend board and committee meetings, (ii) be prepared to make informed decisions by maintaining familiarity with the governing documents and records, (iii) seek out additional information when appropriate, (iv) exercise independent judgment and avoid conflicts of interest, (v) monitor performance of employees, management and staff, (vi) consult with legal counsel and other professionals as appropriate, and (vii) ensure that appropriate steps are taken for the maintenance of corporate records in compliance with statutory requirements imposed on the association. While it may at many times be a thankless job, directors must ensure operational and physical oversight of the association and ensure that the interests of the homeowners or condominium unit owners are being protected and guarded with due care.



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