

Timberline Cove HOA Board Training

May 2024

Purpose & Key Roles of Board

1. Manage the Finances

- Financial stability is crucial
- Manage & Maintain prudent financial practices
- Includes:
 - Creating operating budget & overseeing progress
 - Developing reserve budget & managing capital spending
 - Ensuring dues, fees and other payments are collected

Purpose & Key Roles of Board

1. Manage the Finances

2. **Oversee the Maintenance**

- Ensuring upkeep of common areas and amenities
- Ensuring necessary repairs are made

- Includes
 - Identifying current & potential maintenance issues
 - Soliciting and evaluating bids
 - Identifying budget constraints
 - Prioritizing projects

Purpose & Key Roles of Board

1. Manage the Finances

2. Oversee the Maintenance

3. Plan for the Future

- Consider:

- How will this decision impact long-term condo financial health?
- How will this impact the property value?

- Includes

- Managing the capital reserves
 - Use of 3rd party reserve studies considered best practice
- Maintaining adequate insurance coverage

Purpose & Key Roles of Board

1. Manage the Finances
2. Oversee the Maintenance
3. Plan for the Future
- 4. Enforce the Rules**
 - Uniformly across homeowners
 - Consistently with Bylaws

Purpose & Key Roles of Board

1. Manage the Finances
2. Oversee the Maintenance
3. Plan for the Future
4. Enforce the Rules
5. **Communication with Homeowners**
 - *transparent, truthful* and *welcoming* of all members
 - two-way:
 - *Informing* of status and plans
 - *Listening* to owner's opinions & suggestions

Fiduciary Responsibility

Fiduciary Responsibility: One of the most important roles of a Board Member

Understanding:

- What is it
- Why required
- How we comply
- Benefits of upholding it
- Practical examples

Fiduciary Responsibility – What It Is

Definition

A person or organization (TLC Board) that:

- acts on behalf of another person or persons (homeowners),
- puts their clients' (homeowners) interests ahead of their own,
- with a duty to preserve good faith and trust.

A fiduciary is bound both legally and ethically to act in the other's best interests.

Fiduciary Responsibility – What It Is

Definition

1. The Board of Directors (**us**) is the fiduciary
2. The Association (**homeowners / HOA**) is the beneficiary

Since fiduciaries (**we**) are in a position of trust and authority and are authorized to act on behalf of the association...

...it is the fiduciaries (**our**) legal duty to act in the best interest of their beneficiary (**homeowners**)

We are required to discharge our duties in good faith, with best interest of homeowners and in a prudent manner.

Fiduciary Responsibility – Why Required

1. Fiduciary duties exist in the context of businesses, corporations, and nonprofit corporations.
2. Since a corporation's board of directors is placed in a position of trust and authority, by law, they have a "fiduciary duty" to the corporation and its owners.
3. Timberline Cove's Articles of Incorporation established our HOA as a non-profit corporation
4. As a non-profit corporation, the HOA must follow the Colorado Revised Nonprofit Corporation Act (the body of corporate law which governs nonprofit corporations).
5. As such, the HOA board of directors has a fiduciary duty to their association and its members, requiring them to act in the best interests of the HOA.

Fiduciary Responsibility – Why Required (Summary)

At the highest level, Board members are stewards of public trust and must always act for the good of the community rather than the benefit of themselves.

It is a LEGAL REQUIREMENT

Fiduciary Responsibility – How to Comply

Three key components:

1. Duty of loyalty
2. Duty of care
3. Duty to act within the scope of authority.

Fiduciary Responsibility – How to Comply

Duty of Loyalty...requires HOA Board Members:

- To act fairly, in good faith and for the benefit of the association, as a whole
- To not make decisions based on personal interest or gain
- To avoid acting where there is a conflict of interest

Fiduciary Responsibility – How to Comply

Duty of Care...requires HOA Board Members:

- To make informed decisions. Research, research, research!
- To familiarize themselves with the CC&Rs and applicable state statutes
- To act in a prudent and reasonable manner, use sound business judgment, and avoid uninformed or arbitrary or capricious actions

Fiduciary Responsibility – How to Comply

Duty of Care...three components: (“Business Judgement Rule”)

- To act in good faith
- To take care that an ordinarily prudent person in a like position would exercise under similar circumstances
- To act in a manner the Board member reasonably believes to be in the best interests of the association

Fiduciary Responsibility – How to Comply

Duty to Act within the Scope of Authority... requires HOA Board Members:

- To act within the scope of their authority
- To not make decisions outside the boundaries of their roles or HOA responsibilities
- To obey applicable laws and the governing documents while performing their duties.

Fiduciary Responsibility – How to Comply

Benefits of Upholding Fiduciary Responsibility:

- Protects both the association and its Board members
- Protects against legal actions against Board members
- Protects Board members from personal liabilities.

Other Board Member Protections

- **Through SRG – via our Bylaws, we have Directors & Officers (D&O) insurance coverage.**
 - Covers legal fees, settlements, and other associated costs.
- **Generally, the Colorado Revised Nonprofit Corporation Act - has indemnification provisions for board members to be reimbursed legal expenses in case of a lawsuit.**

By Colorado law, Board members not liable except for wanton or willful acts or omissions

How Boards Breach Fiduciary Responsibility & Incur Legal Issues

- Failure to enforce governing documents or enforcing them inconsistently.
- Failure to take due diligence before making a decision, especially a financial one.
- Failure to properly maintain a common area / element
- Breaking confidentiality
- Decisions based on personal impact or interest
- Conflicts of interest

Board Actions to Limit Claims

- Understand the association and its operations.
- Devote time to association business and actively participate in decision-making.
- Seek the advice of professionals and listen to their advice.
- Avoid making decisions based on popularity or to quiet dissension among neighbors.
- Conduct business for the association's benefit; not personal benefit.
- For all major decisions, document decision making process in the minutes, including professional advice receive.

Summary

The best protection against liability as an HOA Board member is to:

- Take their role seriously
- Fully inform themselves before making decisions
- Ensure they have the authority to act, and
- Always act in the best interests of the HOA

Colorado Legal Statutes

- 1. Colorado Revised Nonprofit Corporation Act ***
- 2. Colorado Common Interest Ownership Act (CCIOA)**

**Timberline Cove HOA is a non-profit entity*

Colorado Revised Nonprofit Corporation Act

Addresses duties, liabilities of Board members

...similar to requirements for profit-based business

Primary Requirements & Legal Considerations:

Duty of Loyalty – Board members must demonstrate fairness of any transaction; no personal advantage received

Duty of Care – Board members must make act in good faith, use prudent judgement to not have a court overturn that decision.

Duty to Act Within Scope of Authority – If Board members exceed this authority and damages result, they may be liable for their unauthorized actions.

Colorado Revised Nonprofit Corporation Act

Addresses duties, liabilities of Board members

...similar to requirements for profit-based business

Other Requirements & Legal Considerations:

Duty of Confidentiality – Board members must protect HOA members' confidentiality and not divulge information provided in confidence. (e.g. homeowner with impending foreclosure)

Duty to Avoid Improper Conflicts of Interest - Board members can not have a material interest in a transaction to which the HOA is a party or be paid to provide service for the association. If in doubt, disclose the potential issue.

Duty to Avoid Intentional Misconduct and knowing Violations - Board members have a duty to avoid deliberate wrongdoing, misbehaving and known violations of the law.

The Colorado Common Interest Ownership Act (CCIOA)

State statute - governs many aspects of HOAs

- The creation and dissolution of HOAs
- Management and authority
- Operation of associations, etc.

Covers all types of HOAs ranging from:

- Large, planned communities with individual homes
- Condominiums like Timber Line Cove.

Note: Many sections have limited applicability to our Condo and the management of the association.

The Colorado Common Interest Ownership Act (CCIOA)

Four Sections:

Part 1 – General Provisions

Part 2 – Creation, Alteration and Termination of Common Interest Communities

Part 3 – Management of Common Interest Communities

Part 4 - Registration

The Colorado Common Interest Ownership Act (CCIOA)

Part 1 – General Provisions (29 Sections; 26 pages)

Examples of what is covered:

- Legal definitions of terms
- Rules on what the declarations, bylaws and rules can't prohibit
- Applicability of local ordinances, regulations and building codes
- Unreasonable restrictions on energy efficiency measures
- Obligation of good faith
- Alternative dispute resolution encouraged

The Colorado Common Interest Ownership Act (CCIOA)

Part 2 – Creation, Alteration and Termination of Common Interest Communities (27 Sections; 30 pages)

Examples of what is covered:

- Legal requirements to create a common interest community (HOA)
- Requirements for declarations and bylaws
- Defines unit boundaries and limited common elements and how to determine owner allocation
- Requirements for plats and maps
- Governance polices
- Collection of assessments and rules for delinquent accounts

The Colorado Common Interest Ownership Act (CCIOA)

Part 3 – Management of Common Interest Community (24 Sections; 36 pages)

Examples of what is covered:

- Powers of the association
- Rules protecting owners access to common elements
- What Board members can and can't do
- What the bylaws must address
- Upkeep of common interest elements
- Requirements for annual homeowner meetings
- Requires regular Board meetings to be open to all homeowners
- Provides rules around quorums and voting
- Gives requirements on maintaining insurance
- Allows for assessments
- Requires the association keep records.

The Colorado Common Interest Ownership Act (CCIOA)

Part 4 – Registration (2 sections; 2 pages)

What is covered:

- Requirement to submit an annual registration and fee
- Manager licensing with the State of Colorado.

Final Legal Considerations

If Board Receives a Legal Challenge

The courts apply the ***Business Judgment Rule*** when evaluating Board decisions. The Business Judgment Rule serves as a defense for Board Members.

To prevail, under the Business Judgment Rule, the Board must show that it ***acted in good faith***, in a way that ***was reasonable under the circumstances*** and was ***not arbitrary or capricious***.

The court recognizes that Board members must make decisions ***based on the information available at the time***.

Final Legal Considerations

A Board member is liable if they:

- Breach the Duty of Loyalty to the HOA
- Do not act in good faith, are guilty of intentional misconduct, or knowingly violate the law
- Receive unlawful distribution of assets, including loans (financial improprieties)
- Receive an improper benefit from any Board transaction