

DUTIES OF ASSOCIATION BOARD MEMBERS

A homeowners association, whether incorporated or unincorporated, is controlled by its governing body, usually called the Board of Directors. It is thus the Board which is responsible to discharge the legal duties of the association.

I. FIDUCIARY DUTIES

"Fiduciary" is defined in Black's Law Dictionary (7th Ed.) as: *n.* **1.** One who owes to another the duties of good faith, trust, confidence and candor (the corporate officer is a fiduciary to the shareholders). **2.** One who must exercise a high standard of care in managing another's money or property (the beneficiary sued the fiduciary for investing in speculative securities). The relationship between the Board of Directors of a Common Interest Development and its members are fiduciary in nature. Individual Board members are held to a high standard of conduct, the breach of which may subject each or all of them to individual liability.

A. Duty of Loyalty

The directors of an association may not make decisions for the homeowners' association that benefit their own interests at the expense of the association and its members. The duty of undivided loyalty applies when the Board of Directors of a homeowners' association considers maintenance and repair contracts, the operating budget, creation of reserve and operating accounts, etc.

B. Duty of Good Faith

A director shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith.

1. The Duty of Good Faith prohibits a director of a corporation from placing himself or herself in a position adverse to that of any member.
2. The Duty of Good Faith obligates the Directors to exercise their discretion in the best interests of the corporation.
3. The Duty of Good Faith prohibits the Directors from acting in an arbitrary or capricious manner.

C. "The Business Judgment Rule"

The business judgment rule is codified in California Corporations Code §7231, which states:

(a) A director shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, 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 in a like position would use under similar circumstances.

(b) In performing the duties of a director, a director shall be entitled to rely **and should rely** on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

(1) One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented;

(2) Counsel, independent accountants or other persons as to matters which the director believes to be within such person's professional or expert competence; or

(3) A committee of the board upon which the director does not serve, as to matters within its designated authority, which committee the director believes to merit confidence, so long as, in any such case, the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

(c) A person who performs the duties of a director in accordance with subdivisions (a) and (b) shall have no liability based upon any alleged failure to discharge the person's obligations as a director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which assets held by a corporation are dedicated.

Under this rule, courts will not review directors' business decisions, or hold directors liable for errors or mistakes in judgment, so long as they were disinterested and independent, acting in good faith, and **reasonably diligent in informing themselves of the facts**. The "business judgment rule" refers to a judicial policy of deference to the business judgment of corporate directors in the exercise of their broad discretion in making corporate decisions. Generally, courts will uphold decisions made by the governing board of an owners association so long as they represent good faith efforts to further the purposes of the common interest development, are consistent with the development's governing documents, and comply with public policy.

D. Duty of Obedience

The Duty of Obedience obligates a Board of Directors to follow their own governing documents and the law.

Directors owe such duty in the management of corporate affairs. In performance of their official duties, directors are under obligations of trust and confidence to the corporation and its stockholders. Directors must act in good faith for the interests of the corporation or its stockholders with due care and diligence and **within the bounds of their authority. It is the duty of the director to see that a corporation keeps within its corporate powers and obeys the laws.** In *Lamden v. La Jolla Shores Condominium Association*, (1999) 21 Cal. 4th 249, 265, the California Supreme Court reiterated the principle that the Board's decisions must be "consistent with the development's governing documents."

II. **DUTY OF DUE CARE**

A. Association Liability.

Homeowners associations have a duty to exercise due care for the residents' safety in those areas under their control. To be liable for harm, the Association need not foresee the precise injury to plaintiff so long as the possibility of a type of harm is foreseeable. In *Frances T. v. Village Green Homeowners Association* (1986) 42 Cal. 3d 490, 499, the California Superior Court held that a homeowner could sue their homeowners association for injuries sustained when the homeowner was criminally assaulted in their condominium unit. In that case, the Association failed to respond in a timely manner to the need for additional lighting in the common area, and further ordered the homeowner to disconnect additional lights which she had installed in the common area.

As a practical matter, however, a high degree of foreseeability is required in order to find that the scope of the duty includes adequate measures to prevent the harm. The requisite degree of foreseeability rarely, if ever, can be proven ***in the absence of prior similar incidents of violent crime on the premises.***

B. Individual Board Member Liability.

An officer or director will not be liable for torts in which he does not participate, of which he has no knowledge, or to which he has not consented. . . . "While the corporation itself may be liable for such acts, the individual officer or director will be immune unless he authorizes, directs, or in some meaningful sense actively participates in the wrongful conduct." . . .

To avoid individual liability for tort claims, a Board member ***may not rely on abstention from voting*** as the basis to assert non-participation in the tortious actions of the Board.

III. **STATUTORY DUTIES**

A. Collection of Assessments

1. The Association must levy assessments sufficient to perform its duties under the governing documents and the Davis Stirling Act. - Civil Code 1366
2. The Association may not impose or collect assessments or fees which exceed the amount necessary to defray the costs for which they are levied. - Civil Code §1366.1
3. The Association must prepare an annual budget - Civil Code §§ 1363(b), 1365
4. Lien for Delinquent Assessment - Civil Code §1365
5. Alternative Dispute Resolution for Assessments - Civil Code §1366.3
6. Recorded Assessment Information Statement - Civil Code §1366.2

7. The Association does **not** have a duty of disclosure to prospective purchasers of individual units, and furthermore, Board members should avoid making disclosures to prospective purchasers regarding individual units lest they be deemed by a buyer to have assumed an obligation to disclose, or deemed by the seller to have interfered with a contractual relationship.

B. Maintenance and Repair Obligations

California Civil Code §1364(a) provides:

Unless otherwise provided in the declaration of a common interest development, the association is responsible for repairing, replacing, or maintaining the common areas, other than exclusive use common areas, and the owner of each separate interest is responsible for maintaining that separate interest and any exclusive use common area appurtenant to the separate interest.

In addition, most association governing documents require the Association to procure property insurance for repair or replacement of common area components, and California Civil Code §1365(e) obligates the Association to provide a summary of such insurance to its members, on an annual basis.

It is important to note that, while the individual homeowners may be responsible to maintain and repair certain common area components, including those located within exclusive use common areas, the Association may nevertheless be required to ***insure*** all common area elements, including exclusive use common areas. The Association's duty to insure the common area for certain types of perils (e.g., fire, flood, etc.) may thus supercede the individual homeowner's duty to maintain and repair.

C. Financial Obligations

1. Financial Management and Reserve Funding - Civil Code §1365.5
2. Disclosures
 - a. Civil Code §1365 (Annual Budget)
 - b. Civil Code § 1365.1 (Mandatory Assessment Disclosure Notice)

- c. Civil Code § 1365.2 (Inspection of Books and Records by Members of Homeowners Association)
 - d. Civil Code §§1363.850, 1369.590 (Alternative Dispute Resolution Procedures)
 - e. Corporations Code § 8330 (Members' right to membership list)
 - f. Corporations Code § 8334 (Directors' absolute right to inspect and copy corporate books and records)
 - g. Corporations Code § 8336 (Court enforcement of inspection rights)
3. Insurance
- a. Civil Code §1365.7 (Limitation of liability against **volunteer** Directors)
 - b. Civil Code §1365.9 (Limitation of liability against members)
4. Conflicts of Interest
- a. "Interested" Directors - Corporations Code §7233
 - b. Voting by Interested Directors - Corporations Code §§ 7233, 7234
- D. Document Enforcement Obligations
- 1. Association Standing to Sue to enforce the governing documents - California Code of Civil Procedure §383
 - 2. Obligation to Offer Internal Dispute Resolution Procedure- Civil Code §§1363.810-1363.850
 - 3. Alternative Dispute Resolution - Civil Code §§1369.510-1369.590

4. Note: The Association's "duty" to enforce the governing documents is not absolute, and is subject to the Business Judgment Rule (above). *Beehan v. Lido Isle Community Association*, (1977) 70 Cal. App. 3d 858, 865
- E. Board Meetings
1. Open Meeting Act - Civil Code § 1365.05
 2. Disciplinary Hearings
 - a. Fine Schedule - Civil Code §1363(g)
 - b. Notice and Opportunity to be Heard - Civil Code §1363(h); Corporations Code §7341
 - c. Fines may **not** become a lien, except where imposed to repair damage to the common area caused by fault on the part of the member - Civil Code §1367(b), (c).