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SUBJECT: Board Duties / Meeting Conduct

Greetings! The purpose of this letter is to assist new directors with diverse backgrounds and viewpoints to unite as a cohesive functioning Board. First off I want to say that disagreement is a natural and healthy part of team work. My hope is this packet will assist directors in seeing their roles as collaborators not adversaries. We must remember that we all have the same goal: to keep the community a wonderful place to live.

Following are a few key points that are worth highlighting front and center:

Conduct outside of Meetings – Differing opinions are a common but healthy part of Board meetings. The Board makes decisions through consensus, but ultimately it is the majority that wins. Although board votes tend to be unanimous, this is not always the case.

Dissenters have the right and duty to express their opinions to the other Board members. However dissenters also have the duty to respect and uphold the majority decisions of the Board and to support the execution of those decisions. In order for the Board to maintain credibility and respect from the homeowners, it is critical that the Board maintain a united front. Therefore Board members ought to be cognizant of how they communicate Association business to non Board members. Non Board members will likely perceive individual Board member communications as though they “speak for the entire Board” instead of them as an individual. Therefore it is critical that communications from the Board be made through Board approved mediums of communication, which include: Association sanctioned letters and newsletters, the Association website, Association sanctioned email “blasts”, Association sanctioned bulletins, regular Board meetings, Annual Meeting and Elections and Association hosted “Town Meetings”. Communication to members outside of these mediums may result in misunderstanding and misinterpretation of Board decisions and may breed hostility or resentment, thus undermining the Board as a whole.

As a manager I have witnessed several cohesive Boards splinter into differing feuding camps. Divided Boards tend to be ineffective. Please give these comments consideration when reviewing the attached “Guidelines of Board Conduct”. These guidelines are just that – guidelines – that many Board have found useful, especially when confronted with personality clashes and/or excessively long (and unproductive) meetings. As time passes, Board’s are generally able to loosen up the Board meeting rules as the Board becomes a more cohesive and effective unit.

Also Attached please find the following articles:

1. Understanding The Homeowners Association Concept
2. Primer on Duties and Authority of Association Boards

The attached articles are intended to educate new and incumbent Board members of their duties and responsibilities and assist the Board in deciding on officer and committee liaison appointments.

GUIDELINES OF BOARD CONDUCT

1. The Meetings shall be run using some form of Parliamentary Procedure.
2. The President shall be the Chairperson.
3. The Chairperson shall strictly adhere to the Agenda. The Chairperson shall limit discussion on topics that are not on the agenda. The Chairperson shall keep the tempo of the board meeting at an efficient pace. Chairperson shall be prepared to ask for motions when necessary and move business along when no motions are made. Chairperson shall be empowered to limit debate on any subject unless there is a vote of a majority of Board members overruling the Chairperson. The Chairperson shall not vote on any motion unless a tie breaker is needed.
3. All Board members shall review the Board packet ahead of the meeting and will come prepared. Board members shall arrive on time. When arriving late, Board members shall not address old agenda items without the consent of a majority of the Board.
4. Board members and guests must be recognized by the chair before addressing the Board.
5. Discussion of any topic may be tabled or postponed with a majority vote of the Board. A majority vote of the board will also be required to reintroduce an item to the agenda once it has been tabled or postponed, unless specific reintroduction instructions are included in the verbiage of the motion to postpone or table.
6. Homeowners shall be given an opportunity to speak during “Homeowner Questions and Comments”. Homeowners wishing to address the Board must first fill out a “Request to Address the Board” form, which will be provided by management. Homeowners must restrict the length of their address to five minutes. “Homeowner Questions and Comments” shall be allotted no more that 30 minutes. The remainder of the meeting is for Association business as administered by the Board of Directors. Homeowners, residents and guests shall not address the Board unless recognized by the Chairperson.
7. Discussion on a particular topic should be limited to one three-minute session per member and one one-minute follow up per member. No Board member shall address the Board until all Board members have been given the opportunity to speak. If a motion is made and seconded, Board members shall be allotted another 1 minute period to speak before the item is brought to a vote.
8. Except for extraordinary situations, all items that fall under the normal duties or jurisdiction of a committee, volunteer, employee or contractor, shall be referred to the appropriate individual(s) or committee for consideration. Upon review, the appropriate party shall decide whether the issue should be handled with or without Board intervention. All issues can be appealed directly to the Board.
9. Board meetings shall not exceed two hours without a majority vote of the Board of Directors.
10. Homeowners, Board Members and guests must always be respectful and polite towards others. Shouting, personal insults, loud outbursts, rude interruptions and threatening behavior must not, and will not, be tolerated.
11. Management shall make a point of order, when any of the aforementioned rules are breached.

Below is a sample policy that will help define, establish and communicate with committee's serving the Board.

BOARD COMMITTEE LIAISON CHARTER

Whereas, the Brickyard Landing Owners Association (hereafter referred to as "The Association") is responsible to establish and oversee all Declaration and Board chartered Committees as set forth in Article 10.01 of the Bylaws, *Therefore be it resolved* that this document establishes the position of "Committee Liaison" and sets forth the responsibilities and expectations of this position.

1. Each Committee shall consist of one Board appointed Liaison. The Liaison may be a member of the Board of Directors. At the approval of the Board of Directors, the Liaison may also be a member of the sub-committee of which it serves as Liaison; however the Liaison's primary duty is to the Association and the Board of Directors.
2. The Liaison's sole task is to communicate between the Board and Committees and shall have no obligation to perform operational tasks for the Committee other than in this capacity.
3. The Liaison shall not make decisions on behalf of the Board without the consent of the Board.
4. The Committee Chair shall provide a monthly written "Committee Activity Reports" to the Liaison. The Liaison shall submit the report to the management company at least one week prior to the regular Board meeting for inclusion in the Board packet. The purpose of the report is to prepare the Board members so that meeting time is used efficiently. The written report shall contain the following components:
 1. A brief description of the Committee's activities since the last report.
 2. A list of recommendations submitted by the Committee.
 3. A description of appropriations requested by the Committee.
 4. Any changes to the Committee's membership.
 5. Any supplemental documentation (e.g. invoices, proposals, and pictures) shall be attached to report.
5. In July of each year, The Liaison shall submit the Committee's budget request (with supporting documentation) for the following fiscal year.
6. The Liaison shall communicate all Board resolutions and recommendations to the Committee.
7. At least annually, The Liaison shall submit a written review and evaluation of the overall performance of the Committee and provide input and recommendations to Management and the Board.
8. The Liaison and Committee members shall be unpaid volunteers. The Liaison and Committee members are not authorized to spend association funds without prior written approval from the Board of Directors. Liaison and Committee members shall not receive reimbursement for travel expenses unless approved in writing by the Board of Directors.
13. The Liaison shall work at the pleasure of the Board.

Procedure for conducting hearings with homeowners during board meetings

This procedure is intended to layout a process to follow so that hearings are conducted in an efficient and professional manner.

Step #1: When a homeowner appears for a hearing and if the schedule will allow, the President will offer to conduct the hearing immediately. Doing so shows an appreciation of the owner's time and nothing is lost for the gesture.

Step #2: If other homeowners are present, advise the homeowner of their right to conduct the hearing in executive session. If they accept this option explain to them that executive session comes at the end of the meeting. If there are no other homeowners present, the Board can immediately adjourn to executive session and conduct the hearing.

Step #3: Advise the homeowner that the Board will not be making a decision during the hearing. Rather, the hearing is an opportunity for the Board and homeowner to ask each other questions and explain each other's perspective. The actual decision will be made in executive session and the homeowner will receive the ruling in writing.

President asks the owner if he/she wants to make a statement

Each Board member is given an opportunity to ask the owner a few questions to gather sufficient information to make a decision.

President concludes the hearing by asking the owner if they have any final comments, then thanking them for attending and reminding them that the Board will make a decision later in executive session and they will be notified in writing of the Board's decision.

Conclude the hearing and reconvene the meeting wherever it was left off.

Note: Always endeavor to keep the hearing cordial and non confrontational. If any participant cannot conduct themselves in an appropriate manner, the President can call for a vote to adjourn the hearing.

UNDERSTANDING THE HOMEOWNERS ASSOCIATION CONCEPT

To be effective, a homeowners association needs a strong board of directors that understands its role and pursues it with passion and a concise mission in mind. The following outline provides an overview of board roles and responsibilities.

To form an effective board, directors must have a clear understanding of the strengths and weaknesses of the association, its history and what is to be accomplished. Every homeowner association should have responsibility for its assets as well as its operation in accordance with standards established by state and federal law, local ordinances, and the governing documents upon which the entity itself was created. To the extent that the association has such authority and control, it is the board of directors that makes certain these responsibilities are fulfilled.

The homeowners association is the cornerstone of a planned residential community. It brings continuity and order to the community, it preserves the architectural integrity and it maintains the common elements. Properly run, the association promotes the concept of “community” and protects the neighborhood's property values. In many cases, it collectively makes available recreational and other facilities that might not otherwise be affordable or available to homeowners and residents on an individual basis.

Deed-initiated homeowners associations have become an essential part of the overall concept of residential property ownership in today's marketplace. Purchase of a home or lot often brings with it mandatory membership in an association which then provides the structure for operation and management of the residential development. With membership comes certain maintenance obligations, financial responsibilities, and a commitment to abide by use restrictions and other rules of the association. To a degree, it necessitates individual conformity for the good of the whole.

The association's responsibilities may be limited to basic maintenance functions or they may be expanded to include sophisticated and extensive upkeep of the property as well as delivery of special services to individual homes (e.g. back door trash pickup). To be successful, its officers and directors must uniformly and fairly govern the community, and it must have a reasonable level of participation by each of its members over time.

Board of Directors

The association has responsibility for its common elements as well as the management and operation of the association's business affairs - - all in accordance with standards established by the governing documents created when the community was first developed. To the extent that an association (typically a non-profit corporation) has such authority and control, it is its board of directors that carries out these duties and responsibilities.

Members of the board of directors of an association serve without compensation unless the bylaws of the association provide to the contrary. The board's authority includes all of the powers and duties enumerated in general law, as long as these powers are not inconsistent with the provisions of the documents governing the association.

Officers of the Association

The association acts through its officers and agents. The board of directors makes the policies for the association, but the officers and agents carry out these policies and administrative functions for the community. Some of the officers are clerical while others carry out substantive functions based on policies established by the board of directors. All of the officers have an affirmative obligation to act with utmost good faith towards the association and cannot deal in the funds or the property of the association to their own self advantage. Each association typically has a president, secretary, and treasurer and may have one or more vice presidents. However, an association may officially conduct its business with fewer officers than these, depending upon the laws of a given state.

PRESIDENT

The president of an association is vested with all the powers generally given to the chief executive officer of a corporation. While specific by-law provisions may vary the president's duties, it is generally presumed that he or she will preside at all meetings of the board and the membership. The president will execute contracts, orders and other documents in the name of the association as its agent. When signing documents, the president should indicate the capacity in which he or she is signing in order to avoid any personal liability since the president's signature, under most circumstances, will bind the association under a doctrine of inherent powers.

The president also assumes general charge of the day-to-day administration of the association and has the authority to order specific actions in furtherance of the board's policies. The president serves as spokesman for the board of directors in most matters relating to general association business. Like all officers of the association, the president has an affirmative duty to carry out the responsibilities of the office in the best interests of the association. Unless otherwise specified in governing documents, the president serves at the will of the board of directors and can be removed with or without cause at any time by a majority of the full board.

VICE PRESIDENT

The vice-president is vested with all the powers which are required to perform the duties of the association president in the absence of the president. The vice president does not automatically possess inherent powers to act in the capacity of the chief executive officer, and may act for the president only when the president is actually absent or otherwise unable to act. The vice-president may assume such additional duties as are defined by the board of directors. Often, the vice-president will chair one or more substantive committees like that of architectural review.

SECRETARY

The secretary of the association is responsible for keeping and maintaining a record of all meetings of the board and the membership and is the custodian for most of the official records of the association. The position of secretary is not simply a clerical position. In many cases, the secretary will not actually keep the minutes of the meetings, but will be responsible for obtaining someone who will do so as a recorder or assistant secretary. As the custodian for the minutes and other official records of the association, the secretary is responsible for insuring access to those records by the members of the association and their authorized representatives.

TREASURER

The treasurer is the custodian of the funds, securities and financial records of the association. When the association has a manager or management company that actually handles the funds on a daily basis, the treasurer's duties will include overseeing the appropriate people to insure that the financial records and reports are properly kept and maintained. Unless the by-laws otherwise specify, the treasurer is responsible for coordinating the development of the proposed annual budget and for preparing and giving the annual financial report on the financial status of the association.

The treasurer does not have the authority to bind the association or the board of directors in dealings with third parties unless the board has provided express authority for the treasurer to do so. As with the association's secretary, the treasurer does not have to perform the day-to-day record keeping functions of the association when this responsibility is transferred to a management company, but the treasurer will ultimately be responsible for insuring that the financial records of the association have been maintained properly in accordance with sound accounting practices.

Fiduciary Relationship and Responsibility

The members of the board of directors and each officer of the association have a fiduciary relationship with the members of the association. This fiduciary relationship imposes obligations of trust and confidence in favor of the corporation and its members. It requires the members of the board to act in good faith and in the best interests of the members of the association. It means that board members must exercise due care and diligence when acting for the community, and it requires them to act within the scope of their authority.

The fact that the association is a not-for-profit corporation, or that the members of the board are volunteers and unpaid, does not relieve them from the high standards of trust and responsibility that the fiduciary relationship requires. When a member accepts a position on the board of directors, he or she is presumed to have knowledge of the duties and responsibilities of a board member. Board members cannot be excused from improper action on the grounds of ignorance or inexperience and liability of board members for negligence and mismanagement exists in favor of the association and the property owners.

Each board member must recognize the fiduciary relationship and the responsibilities that the board has to the association and each of its members. The board's duties must be performed with the care and responsibility

that an ordinary prudent person would exercise under similar circumstances, and the ultimate responsibilities of these unique positions cannot be delegated to a manager, a management company or other third party.

A Recap of the Board Member's Role:

Acting through the board as a whole, a board member should:

- Enforce the documents
- Establish sound fiscal policies and maintain accurate records
- Develop a workable budget, keeping in mind the needs, requirements and expectations of the community
- Establish reserve funds
- Act on budget items and determine assessment rates
- Collect assessments
- Establish, publicize, and enforce rules and penalties
- Authorize legal action against owners who do not comply with the rules
- Review local laws before passing rules or sending bylaws to membership for approval
- Appoint committees and delegate authority to them
- Select an attorney, an auditor, insurance agent and other professionals for the association
- Provide adequate insurance coverage, as required by the bylaws and local governmental agencies
- Inform board members of all business items that require their vote
- Inform members of important board decisions and transactions
- See that the association is protected for the acts of all parties with fiscal responsibilities
- Attend and participate at meetings

Operating a homeowner association carries with it many of the very same duties and responsibilities as overseeing any other business. Serving as a board member is a valuable and rewarding experience that should be undertaken by those who see it as an opportunity to serve their fellow neighbors while protecting and enhancing the assets of the community. It is serious business, but also a task worth doing well in order to safeguard the investments of all.

Who wants to spend two or three hours in fruitless and trivial discussion? Steps can be taken to keep meetings focused, effective, and even shorter.

To be an effective board member your primary responsibility is to protect, maintain, and enhance the value of the condominium community. However, when your time is spent in unorganized, lengthy, and chaotic meetings, not only is the enthusiasm for active participation of current board members diminished, but you also discourage many future volunteers from sitting on the board. Who wants to spend two or three hours in fruitless and trivial discussion? The president must take steps to make the meetings more focused, effective, and shorter. Most meetings can be conducted in an hour if the board members know what is expected of them.

The property manager's job (or president's and secretary's job if you are self-managed) is to prepare and distribute a meeting package several days before the scheduled meeting. The directors' and officers' job is to read it, study it, and contact each other and/or the property manager to ask questions about anything they may not understand. You need to be prepared to talk about the business at hand and to have enough information to make the decisions necessary to effectively do your job.

The package in your hands should have the agenda, the previous meeting's minutes, the current financial statements as compared to the budget, items that require action, and any appropriate items from the

administrative and maintenance calendars. The effective president sets the agenda and goals for the meeting with input from the other board members and the property manager. At the meeting, the president decides what gets discussed and what doesn't and how long any discussion needs to last.

An effective strategy for efficient meetings is to set times on the agenda and stick by them.

Call to order

Set the time and start the meeting. People will learn that you are serious about starting on time and hopefully will cure their habit of showing up 5 or 10 minutes late.

Approval of minutes

This should only take 30 seconds if there are no corrections or additions or up to 3 minutes if there are.

Treasurer's Report

To summarize cash balances, unusual expenditures, and comparison to the budget may take 5 to 10 minutes.

Committee Report

Committee Reports should be in writing and timely enough to be included in the packet. Not every committee will have a report at every meeting. If the committee chairperson or board liaison is there to elaborate on the report, this portion may take 5 or 10 minutes depending upon whether one or two committees are reporting.

Old and New Business

This may take no time at all since all old business was something that had been previously assigned and was discussed earlier in the meeting. New business is nothing more than surprises, and the effective board will not allow surprises to lengthen a meeting without first getting information in writing and researching or questioning the presented facts.

Adjournments

A target time for adjournment should be set on the agenda and the president must see that it is met. If lengthy meetings are diminishing your enthusiasm for the job, a drastic but effective way of shortening the meetings would be to adjourn them on schedule even if not everything gets covered. Be brave! It won't be the end of the world if some things don't get done. The first month you try this, maybe only half the business will get done. The second month, three fourths will get done, and by the third month, the rest of the board will realize the president is serious and will get on with the important matters at hand of making the decisions that affect the community. People will realize that to get the job done, they will need to do their homework ahead of the meetings and they will learn the importance of keeping their comments brief and to the point.

The single most effective strategy that the board can use to run an organized and effective meeting is to insist that any items open for discussion at the meeting first be submitted in writing early enough to be presented in the package. Any proposal should include enough information and background research to anticipate the

questions that might be raised. If the proposal involves the expenditure of association funds, approximate costs must be part of the proposal. By asking for information and proposals in writing, we don't get hit with surprises and we don't waste a lot of time searching for the facts necessary to make intelligent decisions. Many items get a lot of discussion when, in fact, the majority of the board may feel the items are either unreasonable or the actual costs to implement them would prove to be prohibitive.

At board meetings, people are to state their opinions and positions on the motions under consideration - - and then vote. Using time in the meeting for gathering information is not effective and is sure to extend the meeting. It is the president's job to keep the meeting rolling and not waste a lot of time.

A lot of meaningless and trivial discussion can be avoided at the meetings if only those items that are on the agenda are the ones that get discussed. If an individual board member wishes to make an outrageous motion like, "I move that we get rid of all the dogs in the community", and someone else decides to second it just for discussion's sake, then you're wasting everyone's time. If the individual has no real support or second to the motion, there is no need to discuss it. Move on to the important business at hand.

The single most effective strategy for running an organized meeting is to insist that any items open for discussion first be submitted in writing prior to commencement of the meeting.

Since committee reports should be in writing and in the packet, the committee chairperson does not have to attend the meeting unless they need an additional few minutes to emphasize or elaborate on any particular items in their report. If you can't get written reports from your committees, then it may be time to find a new chairperson who can run the committee and supply you with the information you need. However, if you make your expectations clear to the people working for you, you'll be surprised at how well they're likely to do or at least try to do.

Because the board of directors is in charge of running the community in a professional and businesslike manner, more and more communities are finding it effective to hold their meetings during the day. Most individuals are usually able to leave early from their regular job one day a month in order to attend a board of directors meeting starting at 4:30 P.M., for example. The daytime setting during regular business hours emphasizes the point that you are in charge of running a corporation and not just finding extra time to socialize.

The president is the key to keeping the meetings on track and, in order to be effective, needs to have the support of the others. Boards that experience constant bickering, ax grinding and backstabbing only manage to pay less attention to their primary job. Put personal issues to rest and stick to the business at hand. Personal issues and hidden agendas undermine the community. If you feel the president is not doing the job, you can and should run for the position next year.

Your primary job this year is to work together to make the important decisions that serve to protect, maintain, and enhance the community. It may be your home, but the existence of an association makes it also a business. We should remember to treat it like one so that everyone can enjoy the benefits and rewards of community living.

Primer on Duties and Authority of Association Boards

Many new board members have asked for a primer that states in one place what their duties are and by what authority do they operate. The following primer discusses general concepts and law related to the powers and duties of association boards. You should be aware that the law differs between the various States, and therefore a board member should seek legal advice before acting.

Compliance with Governing Documents and Applicable Law

Each board member is obligated to know the applicable law and to faithfully follow the governing documents of the Association. For condominiums, the State statutes on condominiums must be strictly followed. In addition to the express requirements of law, a board member must be familiar with the declaration or covenants, the bylaws, or other controlling documents which form a contract between and among the home owners within the Association. Sometimes the governing documents will conflict with the provisions of the applicable statutes. In general, the condominium or association statutes will prevail over conflicting provisions of the declaration or bylaws (except when the statute specifically authorizes the declaration or bylaws to provide otherwise). The declaration or covenants generally rule over conflicting provisions of the bylaws, and the bylaws generally govern over conflicting provisions of any rules and regulations or house rules adopted by the board. Although at first the concept of following the law and governing documents may appear simple, in practice this can be a difficult and confusing undertaking, and it may require professional assistance.

Maintenance of Common Areas/Building Exteriors

Perhaps the main function of most associations is the repair and maintenance of common areas and building exteriors. The maintenance responsibility for an association is established in the declaration or bylaws. In most associations, those parts of the property that are shared between the home owners are maintained by the association. Responsibility for those portions of the property over which an owner has an exclusive right to use or possess will fall upon the individual owner. In almost every association, there are almost unlimited needs and desires among the membership for repair and maintenance work. The difficult task for the board is to prioritize these tasks and decide how and when the various maintenance tasks are to be performed. This means that the board must become familiar with the property and what is needed. Then, the board must carefully consider what its budgetary restraints are. Finally, the board must develop a plan for meeting its responsibilities. The plan should include periodic inspections of the property, a schedule for performing various repair and maintenance tasks in an orderly and comprehensive manner, and a plan for emergency expenditures. If the board does not plan adequately, what typically occurs is a breakdown of various components and an onslaught of emergency expenditures. For example, if the board delays replacement of a roof, it may find that it is spending an inordinate amount of money patching a deteriorating roof on an emergency basis. Over time, the cost of patching can become more expensive than the re-roofing job would have been in the first place. A great deal of money could be saved by careful planning.

Budgets

Related to the duty to maintain the property is the duty to adopt budgets and collect assessments from the home owners. In a way, an association is merely a conduit for the homeowners to pay for the various expenses of operating the property. The budget process is not one whereby an arbitrary figure is created that will be the monthly assessment and then the board tries to figure out how to best spend the money. The correct process is a reversal of that. The board must first determine what are the necessary expenses and costs of operation and administration, plus a reasonable reserve, and then the monthly assessment is determined by dividing the annual budget among and between the unit owners. The budget process therefore must involve a careful review of past budgets and the actual costs plus a careful examination of anticipated costs and expenses, including obtaining bids and quotes for various services. Of course, in determining the budget, it is appropriate and necessary for the board

to consider the amount of money that can reasonably be collected from the home owners. The amount of the monthly assessment must not be so high that it would adversely affect the property values in relation to other associations in the area or cause economic hardship to the owners. At the same time, the assessment must not be so low that the Association is unable to meet its basic responsibilities for repair and maintenance of the property, to keep the property in good condition, and to have an adequate reserve for emergencies and future repair or replacement.

Reserves

The issue of reserves is often neglected by the board. It is not enough for the board to budget for the existing costs and expenses. It also must establish a reserve for two purposes.

1) Emergencies

Unless the board has a fund from which to handle emergency or unexpected costs, the Association will be vulnerable. The board must assume that some unexpected expenditures will be necessary.

2) Capital expenditures and deferred repair or replacement

The board must find out what the estimated useful life of its structural and mechanical components, surfaces of the buildings and common areas, energy systems and equipment, and then determine a reasonable amount for the owners' monthly contributions to a reserve. Unless this reserve is established, the home owners who use the property will not be contributing towards the replacement of the property in the future. Instead future owners will bear the full cost of major repair or restoration (such as roofing, paving, siding, HVAC, and other major components). The most fair way of handling deferred maintenance (and one that keeps the assessments from going too high) is for the board to divide the cost of future repairs between the current owners (through a reserve or through financing whereby the cost of restoration is spread out over time) and to the future owners (through a special assessment levied at the time of the restoration work).

3) Bad debt

The Association does not have "deep pockets." The only money it generally receives is the assessment payments of the owners. If some of the home owners go into bankruptcy or simply cannot make payment, there will be a budgetary shortfall. Because the budget is determined and then divided amongst the home owners, bad debt will cause a shortfall. It is necessary for the board to determine the anticipated shortfall from bad debt, and to budget accordingly. The past history regarding bad debt can be useful in determining the expected shortfall, but other factors such as the number of cases in collections and the general condition of the economy also may be considered.

Assessment Collection

Once one understands that an association budget is nothing more than dividing up the expenses between the home owners, it becomes readily apparent that the failure of one homeowner to pay his or her fair share of the expenses means that his or her neighbors are the ones paying the delinquent owners bills. This is not an acceptable situation. Therefore, the board has a duty to take every reasonable action to collect the assessments. The board may not waive or excuse, or otherwise forbear the payment of assessments. Those home owners who refuse to pay their assessments should be pursued in court, and every reasonable action should be taken to compel payment. Most associations have lien rights in the unit and can foreclose, take ownership or possession of the property, or garnish the wages or bank accounts of the delinquent owners. Most associations have the ability to recover from the delinquent owner, the costs of collection, including attorneys' fees and legal costs. In addition, because it is unfair for some owners to pay on time, and others to cause the Association to incur expense from late payment, it is

appropriate for the board to charge a reasonable late charge (in accordance with its governing documents and applicable law).

Business Judgment

The board members owe a fiduciary duty to the home owners to manage and operate the Association using the care that an ordinarily prudent person would use under the same or similar circumstances. This means that the board must exercise business judgment in making decisions while operating or managing the Association. Business judgment involves making rational, informed decisions in good faith. The board must strictly follow the law and its governing documents and apply and enforce them in a fair and uniform manner. The board must obtain and consider all of the relevant facts and circumstances, identify the various options available to the board, and carefully weigh which course of action would be in the best interests of the Association and its membership as a whole. The board members cannot act out of passion or prejudice, personal self-interest or gain, or through revenge or other negative motivations. The rational basis for all decisions must be the best interests of the Association consistent with its purposes. This fiduciary duty owed by each board member to the home owners is the same one that directors of publicly traded corporations owe to their shareholders. Of course, the directors of major corporations are sophisticated and experienced business persons and they have professional executives, accountants, and attorneys to assist them at every step. Although the extent and scope of activity of an Association board is much more limited than the activities of a major corporate board, it still behooves the board to engage professionals to some extent before making major decisions. Most associations retain professional managing agents to operate the day to day affairs of the Association and to guide and assist the board in setting policy and establishing procedures to meet its responsibilities. In addition, every Association should have an accountant and an attorney, and consult them when appropriate. In addition, tax and financial advisors are necessary with respect to the handling and investment of funds.

Adoption and Enforcement of Rules

The board has a duty to uniformly enforce the governing documents against the owners and other residents of the property. A board does not have the authority to waive or excuse compliance with the requirements of the covenants. Of course, it is not always clear whether specific actions violate the covenants. It is up to the board to reasonably interpret its governing documents, and to adopt rules and regulations to supplement, explain and administer the enforcement of the basic rules of the Association. In deciding how to enforce the governing documents, the board must carefully consider the nature and scope of an infraction and try to address the situation in a manner that is reasonably related to the severity of the violation. In general, the board should first try informal approaches to obtain compliance, and then increase the severity of the consequences to an owner who continues to violate the rules. The purpose of all enforcement activity is not to punish the violator but only to encourage and obtain full and permanent compliance. Where the violation threatens the safety of person or property, or when there is a flagrant violation, the board may have no choice except to take the violator to court and seek a court order requiring compliance.

Annual Elections, Politics, Board Meetings and Appointment of Officers

One of the most important aspects of Association membership is the need for the home owners to organize politically and to elect their representatives to the board. It is the duty of the board to ensure a fair and free board election on an annual basis. The board must establish procedures necessary to be sure that there are qualified candidates and that each home owner has the opportunity to vote and participate in the political process. The board should share with the home owners all of the information and facts of the problems and issues that face the Association, and patiently explain the rationale and reasoning behind board decisions. The homeowners are entitled to be fully informed about the conduct of the board, and to exercise oversight through the political process. Most associations allow the home owners to address the board at the regular meetings of the board and at the annual meeting. These meetings are a great opportunity for the board to communicate with the home owners and to obtain input and advice from the members. Another duty of the board is to appoint board officers, such as the president, secretary or treasurer of the Association. It is important for the board to exercise careful oversight of the

actions of the officers between meetings of the board. The officers should account to the board for any decisions or actions taken on behalf of the Association. It is necessary for the board to hold regular meetings in sufficient frequency to properly and efficiently handle the affairs of the Association. Most boards meet monthly or quarterly.

Representation of Home Owners/Insurance/Property Rights

The purpose of the board is to represent the interests of the unit owners as a whole, as these interests relate to the property. Therefore, the board is the appropriate entity to pursue claims and rights of the unit owners with respect to the entire property (such as claims against the developer for defects, tax relief, and dealing with third parties related to real property rights). In general, any matter that affects the collective interests of the unit owners (as opposed to the individual rights of an owner) is appropriately handled by the board. All amendments to the governing documents, easements, concessions, licenses, and dedication of the property must be handled by the board (although the approval of the owners may be necessary). In addition, the board must ensure that all tax obligations of the property as a whole have been met, and that the property has the necessary and required insurance. The requirements for insurance will be set forth in the declaration and applicable statutes. On behalf of the Association and its members, the board should insure the property against casualty and loss, and should obtain liability coverage including directors and officers' liability insurance, and bonding. In addition, the board should hold the proceeds of insurance in trust on behalf of the owners to ensure the proper restoration of damaged property.

Books and Records

Although the board is the entity responsible for making the decisions on behalf of the owners, the Association still belongs to the home owners and they have a right to be fully informed about the Association. The board must keep detailed and accurate records. This includes accurate copies of the , association's declaration, articles of incorporation (or charter) bylaws, plats of survey, rules and regulations (and all amendments of these), minutes of all board and owner meetings, insurance policies, contracts, leases, and other agreements in effect, a listing of the names and addresses of the members, copies of ballots and proxies for past elections, and including the books and records of account (including an itemized accounting of the budgeted and actual receipts and expenditures of the Association with supporting budgetary and financial documents. Home owners should have reasonable access to these books and records for a proper purpose and consistent with the requirements of applicable law.

Emergencies

The board is not the insurer of the property and is not a police force. It need not undertake to protect the owners from criminal conduct or casualty. However, in emergency situations, the Association may be in the best position to minimize damage and to correct any problems. Most declarations authorize the board to enter the individual dwelling units for emergency purposes to protect the property or residents from harmful conditions. When acting under emergency authority, the board should limit its actions to only those made necessary by the emergency at hand. and defer all other actions. For example, if the plumbing in a unit fails, the board may enter the unit and stop the water incursion and to take action to minimize the water damage to the unit and other property. Beyond what is reasonably necessary to alleviate the emergency at hand, the board should not infringe upon the authority of the individual owner to repair or maintain his or her unit. Emergency actions should be measured responses to the circumstances of a particular crisis, and the board should take care to limit its involvement to only what is absolutely necessary.

Human Rights and Accommodations

The law requires that housing, and all associated services and facilities, must be available to persons without discrimination on the basis of race, color, religion, gender, familial status (children under 18), disability, or national origin. The board is the entity responsible for making sure that the Association operates in a manner that does not unlawfully discriminate. The language of Association rules and enforcement must be neutral as

to the protected classes. Typical problem areas are rules and facilities that discriminate against children and families, or facilities or rules that fail to reasonably accommodate the needs of disabled persons (in rules, policies, practices, or services to afford a person with a disability equal opportunity to use and enjoy a dwelling). Other issues that arise are subtle forms of racial and ethnic discrimination as it relates to extended family living in a unit, celebration of holidays, or unequal treatment in making appointments to office, granting of privileges, or enforcement. In addition, depending upon the facts and circumstances, the board may have a duty to address and stop unlawful discrimination committed by the individual owners, residents, or vendors of the Association. This area is one ripe for litigation and therefore the board should consult with competent counsel when addressing these issues.

BOARD MEMBER CODE OF ETHICS

As a Board member, you need to be aware that more is expected of those in leadership roles. Review the following statements. Signing this Code of Ethics solidifies your commitment to honest Board service.

As a member of this Board, I will:

- Be committed to fulfilling the mission and vision of the XYZ HOA.
- Keep all confidential Board information, confidential.
- Focus my efforts on the XYZ HOA and not my personal goals.
- Serve on a ^{committee} and/or task force in a leadership capacity.
- Refrain from using my service on this Board for my own personal advantage or for the advantage of my friends or associates.
- Respect and support the majority decisions of the Board.
- Immediately disclose to the Board any perceived or real conflict of interest as soon as I have knowledge of the potential conflict.
- Approach all Board issues with an open mind, prepared to make the best decisions for everyone involved.
- Do nothing to violate the trust of those who elected or appointed me to the Board or of those we serve.
- Never exercise authority as a Board member except when acting in a Board meeting or as I am delegated by the Board or its President.
- Continue to maintain the XYZ HOA Board member candidate qualifications.
- Consider myself a trustee of this organization and do my best to ensure that it is well maintained, financially secure, growing and always operating within the best interest of those we serve.

BOARD MEMBER SIGNATURE

DATE