

## FIDUCIARY DUTIES OF DIRECTORS

**Fiduciary Duty:** "A duty to act for someone else's benefit, while subordinating one's personal interest to that of the other person. It is the highest standard of duty implied by law (e.g., trustee, guardian)." -*Black's Law Dictionary*

"It is well settled that directors of nonprofit corporations are fiduciaries. *Raven's Cove Townhomes, Inc. v. Knuppe Development Co.*, (1981) 114 Cal.App.3d 783, 799.

Upon their election to the board of a common interest development, directors become fiduciaries, which means they are held to a higher standard of conduct. As fiduciaries, directors have two primary duties: (i) duty of care, and (ii) duty of loyalty. This applies to directors of both incorporated and unincorporated associations.

**DUTY OF CARE** (Due Diligence). Directors must be diligent and careful in performing the duties they have undertaken. **Burt v. Irvine Company**. Directors must:

1. **Attend and participate** in meetings so they can be informed about the association's business.
2. Make **reasonable inquiry** before making a decision.

**DUTY OF LOYALTY (No Self-Dealing)**. Directors must act in the best interests of the association even if at the expense of their own interests. This is more than just **embezzlement** of funds; it includes steering contracts to family members and other forms of personal benefit at the expense of the membership. Violation could result in (i) liability for all profits received, (ii) all damages caused by the breach, and (iii) punitive damages. **Conflicts of interest** do not necessarily create liability.

**Ethics Policy.** Boards should consider adopting a written **ethics policy** to guide directors and govern their behavior.

**Business Judgment.** Directors are protected from personal liability provided they fulfill their duties of loyalty and care, and meet the requirements of the **business judgment rule**.