

You've Made the Commitment to Serve...
2012 Community Association Law Seminar & Expo

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1. The Association's Corporate Obligations

• Meetings of Members

- i. Code requires at least one annual membership meeting
- ii. Three important things to remember for member meetings:
 - a) Notice
 - b) Quorum
 - c) Proxies

• Books & Records

- i. Code sets minimum requirements for what records you must keep and members' rights of inspection, your documents may have broader requirements
- ii. Under Code, members have automatic rights to inspect certain "soft" records, other "hard" records require written demand showing good faith and proper purpose

• Standard of Care for Board

- i. Business Judgment Rule:
 - a) A director shall discharge his or her duties: 1) in a manner the director believes in good faith to be in the best interests of the corporation; 2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances. O.C.G.A. § 44-3-830
- ii. Duty of Loyalty
 - a) Board members cannot represent their own interests over those of the Association
 - b) Obligation of loyalty not to compete with the Association, not to usurp an association's opportunity, and to avoid conflicts of interest

• Conflicts of Interest

- i. Arises when a Director's owes a duty to an entity with interests that conflict with those of the Association or when an outside influence affects a Director's ability to make an independent decision
- ii. Duty of Disclosure –duty to disclose (1) the existence of the director's conflicting interest and (2) all facts known to the director regarding the conflicting interest
- iii. Transaction involving conflict must be approved by a majority, but not less than 2 of the disinterested directors

2. Fundamentals of Collecting Assessments

• Develop a Collection Policy

- i. Parameters can be time based or account balance based, or both
- ii. Decide minimum authorities for negotiating settlements, such as payment plan terms
- iii. Enforce the collection policy uniformly for all owners

- Know your Powers
 - i. In addition to past due assessments, the Declaration of Covenants typically allows an association to collect late fees, interest, fines and attorney fees
 - ii. Powers and limitations also based on type of association: Georgia Condominium Act, Property Owners Association Act, Homeowners Association
- The Process
 - i. Demand Letter, lawsuit, judgment
 - ii. Magistrate Court for suits \$15,000 and under, no foreclosure, much faster and less expensive
 - iii. Superior Court for suits greater than \$15,000, foreclosure order, much slower and more expensive
- Collecting the Judgment
 - i. Bank and wage garnishments, rent garnishment if tenant in property
 - ii. Foreclose on lien, if your association has the authority and you have a proper judgment
 - iii. Utility Suspension only if you have authority and the service is provided by the association
 - iv. Must be able to locate assets
- 3. Tips and Techniques for Boards and Managers to Work Together Better to Benefit Your Community**
- Should our Board *Connect* with a Manager
 - i. Time--Quality of Life
 - ii. Knowledge--Industry experience and licensing
 - iii. Continuity
 - iv. Convenience
 - v. But Consider:
 - a) Added Cost
 - b) Board cannot simply turn over all tasks and decisions
- Four Tips on How to *Connect* with a Management Company
 - i. Requests for Proposals (RFPs)
 - ii. Seek Bidders who Manage Similar Size Communities, Check Referrals
 - iii. Interview
 - iv. Must the Decision be Based Solely on Price?
- Best Techniques for *Connecting* with Your Manager
 - i. Email
 - ii. Monthly or Quarterly Board Meetings
 - iii. Conference calls with Board
 - iv. Create committees to work directly with managers
 - v. Residents connecting with manager
- Managers Can Help Boards Improve *Connections* with Owners
 - i. Regularly publishing newsletter
 - ii. Maintain association website
 - iii. Educate new Owners
- Tips for Boards/Managers Working Together to Obtain the Best Results
 - i. Know what you are paying for
 - ii. Set clear goals
 - iii. Determine areas of authority
 - a) Committees
 - b) Board Members
 - vi. Listen to the advice from the Professionals

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Association is a Non-Profit Corporation

- Subject to the Georgia Non-Profit Code, 14-3-101, et seq.
 - Binds all “incorporated” community associations
 - GCA and POAA must be incorporated
 - Code is in addition to requirements of Association’s governing documents, Condo Act and POAA.
 - Governs corporate responsibilities of the Association, such as Member Meetings, Director and Officer Duties, and Corporate Books and Records.
 - Registration must be updated annually



Meetings of Members

- Annual meeting required by Code
- Special Meetings can be held for particular purposes
- 3 Important Factors:
 - Notice
 - Proxies
 - Quorum
 - If none provided in Association documents, must be at least 10% for common law HOAs and 1/3 for GCA/POA



Books & Records: What you Must Keep

- Code sets minimum requirements for records that Association must maintain (Ga. Code 14-3-1601, et seq.)
- Requires:
 - All Association governing documents and amendments
 - Certain resolutions adopted by members or Board
 - Minutes of member meetings, waivers of notice of meetings, and members' consents evidencing actions taken by membership for past 3 years



Books & Records

- General communications to membership for past three years
- Names and addresses of current Board of Directors and Officers
- Most recent annual registration with Secretary of State
- Appropriate accounting records
- Records of all members names and addresses



Member's Right to Inspect Books & Records

- Code sets minimum requirements for inspection
- Right to inspect only applies to Association members, their agents and attorneys
- Can charge reasonable fees for copies.
- Failure to allow inspection of records to which a member is entitled can subject Association to liability for attorneys' fees incurred by member in obtaining court order to inspect records.



Right to Inspect Depends Upon Type of Records Sought

- Entitled to Inspect on 5 business days' notice:
 - All Association governing documents and amendments
 - Certain resolutions adopted by members or Board
 - Minutes of member meetings, waivers of notice of meetings, and members' consents evidencing actions taken by membership for past 3 years
 - General communications to membership for past three years
 - Names and addresses of current Board of Directors and Officers
 - Most recent annual registration with Secretary of State



Right to Inspect Depends Upon Type of Records Sought

- Other “hard” records require a written demand in good faith and for a proper purpose that:
 - shows that the records are reasonably relevant to the member’s legitimate interest as a member;
 - describes with reasonable particularity the purpose and the records the member desires to inspect;
 - states that the records are directly connected to the purpose listed; and
 - states that the records are to be used only for the stated purpose.



“Hard Records”

– These include:

- Appropriate accounting records
- Records of all members names and addresses
- Board meeting minutes, minutes of a committee acting in place of the Board, minutes of member meetings and records of action taken by members without a meeting older than 3 years, records of action taken by Board without a meeting



Director's Duty to Corporation

- Fiduciary Duty of Loyalty:
 - Imposed by Courts to prevent one in whom confidence is placed from representing his or her own interests over those of his or her charges.
 - Requires that Board members:
 - Do not compete with the Association
 - Avoid conflicts of interest
 - Maintain confidentiality of information obtained in the course of performance of Board Member's duty



Conflicts of Interest

- Arises when an outside influence affects a Board member's ability to make an independent decision, or when a Board member owes duties to separate entities with competing interests.
- If not dealt with properly, can be breach of duty of loyalty that can expose individual Board member with conflict to liability



Handling Conflicts of Interest

- Board member has a duty to disclose:
 - The existence of the Director's conflict of interest
 - All material facts known to the Director regarding the conflict
- After disclosure, transaction must be approved by a majority, but not less than two (2) of the disinterested directors.



Board of Directors' Standard of Care: Good Business Judgment

- A director shall discharge his or her duties:
 - In a manner the director believes in good faith to be in the best interest of the corporation; and
 - With the care that an ordinarily prudent person in a like position would exercise in similar circumstances.
 - In discharging these duties, the Board can rely on attorneys, managers, accountants





Fundamentals of Collecting Assessments



Develop a Collection Policy

- Duty to the *Association* to collect past due assessments
- Set guidelines for delinquent accounts
 - Time parameters
 - Money parameters



Develop a Collection Policy

- Negotiation Parameters
 - Decide what your Association is NOT willing to compromise
 - Decide what your Association IS willing to compromise
- Stick to your guns



Know Your Powers



- **Covenants and By Laws**
 - Assessments, late fees, interest, attorney's fees, costs of collection, fines
 - Powers are document specific
- **Statutes**
 - GCA, POAA, HOA



The Process

- Demand letter
- File Suit
 - Magistrate – limited jurisdiction, but faster and less expensive!
 - Superior – more options, but slower and more expensive!
- Judgment



Collecting the Judgment

- What can you do with a judgment?
 - Wage garnishment
 - Bank garnishment
 - Rent garnishment (if there is a tenant)
 - Foreclose – IF you have the authority and proper judgment from Superior Court
 - Utility suspension
 - IF you have the authority AND the service is provided by the Assoc.
 - Condominium: GA Condominium Act (If you're a condo, authority needs to be in the declaration and then the Act applies: >\$750 judgment, costs of shut off/reinstatement assessed back to owner)
 - POAA and HOA (all depends on documents)



Collecting the Judgment



- Finding Assets
 - Information from the Association and Management Company
 - Asset searches: locating bank accounts
 - Employer searches
 - Credit reports
 - Information from the debtor



Goals of the Association

- Get money in the door
- Minimize risk to the Association and you





Tips and Techniques for Boards and Managers to work together *better* to *benefit* your community



Should our Board Connect with a Manager

1. Time ---- Quality of Life

- Assessment notices/ paying bills
- Preparing financials
- Obtaining bids
- Sending initial enforcement letters

2. Knowledge

$\$250,000 \times 200 \text{ Homes} = \$50,000,000$
value of homes within community
----- Industry experience and licensing



Should our Board Connect with a Manager

3. Continuity

- Record keeping
- Budgeting
- Vendors
- Individual resident issues

4. Convenience

- But Consider:
 - Added Cost
 - Board cannot simply turn over all tasks and decisions



Four Tips on How to *Connect* with a Management Company

1. Request for Proposal (RFP)

- Services we need:
 - Financial Operations
 - Bids
 - Oversight
 - Notice of and Attending Meetings



Four Tips on How to *Connect* with a Management Company

2. Seek Bidders who Manage Similar Size Communities
 - Referrals
3. Interview
 - Detailed Questions as to Daily/Weekly/Monthly Practices
 - Drive-throughs
 - Financial Statements
 - Typical Response Time
 - Extra Costs
4. Must the Decision be Based Solely on Price?
 - Does the Association Need “Financials” Only



Best Techniques for Connecting with Your Manager

- Monthly or Quarterly Board Meetings
- Conference calls with Board
- Email
- Create committees to work directly with managers
- Residents connecting with manager



Managers Can Help Boards Improve *Connections* with Owners

- Newsletters
- Association website
- Educate new Owners



Tips for Boards/Managers Working Together to Obtain the Best Results

1. Know what you are paying for
2. Set clear goals
3. Determine areas of authority
 - Board Members
 - Officers
 - Committees
4. Listen to advice from the Professionals



Thank You for Joining Us!

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