

Your Community, Your Impact: A Beginner's Guide to HOA's and Condos
2012 Community Association Law Seminar & Expo

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1. Director and Manager Roles and Responsibilities

- Powers and duties for Directors found in Bylaws
 - i. Preparing and adopting an annual budget;
 - ii. Collecting assessments;
 - iii. Hiring and firing property managers, landscapers, pool technicians, etc.;
 - iv. Creating rules and regulations;
 - v. Imposing fines for covenant violations;
 - vi. Opening a bank account for the association;
 - vii. Filing suit to enforce the covenants; and
 - viii. Keeping the books and records;
- Differences between Directors and Officers
 - i. Directors are elected by homeowners
 - ii. Officers are appointed by the Board
 - iii. Older documents do not require that Officers be Board members too
- Officer Positions
 - i. President, Vice President, Secretary and Treasurer
 - ii. You can delegate authority, but not responsibility
- Manager's Roles and Responsibilities
 - i. Look to the contract
 - ii. Understand agency law

2. "Encouraging" Payments

- Do Not Attempt Without Consulting with Your WNCW Attorney
 - i. Rental Assignments vs. Rental Garnishment
 - a) Rental Assignment must be authorized under the governing documents
 - 1) Obligates tenant to pay rent to association if owner is delinquent
 - 2) Can be done at any time, but usually done before the lawsuit
 - b) Rental Garnishment is like a wage garnishment
 - 1) The garnishment is filed with the Court and served upon the tenant by the Sheriff
 - 2) Can only be done after judgment against the owner is obtained

- Do Not Attempt Without Consulting with Your WNCW Attorney
 - i. Beyond Normal Collection Activity
 - a) Access – deactivate electronic devices that allow for automatic entry*
 - b) Parking – suspend use of common element parking and tow or boot violators*
 - c) Use of Elevators – suspend use of the common element elevators*
 - d) Recreational facilities – suspend access of delinquent owners*
 - e) Utilities – suspend utilities paid for as a common expense*
- *AUTHORITY MUST BE IN DECLARATION**

3. Handling Architectural Issues, Use Restrictions and Maintenance Responsibilities

- Make sure everyone in the Community is familiar with the Governing Documents
 - i. Board should be familiar with Declaration, Bylaws, Articles of Incorporation, Rules, Regulations and Design Guidelines
 - ii. Make sure Owners receive copies of Governing Documents
 - a) Welcome committee or property manager
 - b) Put documents on website
 - c) Highlight specific provisions in newsletter
 - d) Make sure Owners know forms and procedures
- How to Handle Architectural Issues
 - i. An Owner must seek architectural approval for anything on the exterior of the house, landscaping, or any changes to the lot
 - ii. The Community should establish design guidelines for the community
 - a) Make sure they are consistent with architectural standards
 - b) Your manager can assist the Board
- How to Enforce Use Restrictions
 - i. Know what is and is not allowed in the Community
 - ii. Know what Code enforcement, animal control and police will enforce
- How to Enforce Maintenance Responsibilities
 - i. Condominium and Townhomes
 - ii. Single Family Homes
- Enforcement Provisions
 - i. Notice
 - a) Specify violation and action and time frame to correct
 - b) Proposed sanction/enforcement
 - c) Hearing before the Board
 - ii. Sanctions
 - a) Fines
 - b) Right of Abatement
 - c) Suspension of use/votes
 - d) Boot or tow, if allowed
 - e) Sue

SAMPLE: Management Report

October 1, 20XX

7:00 PM — Executive Session

ACTION 1: Decision on employee year-end bonuses. The budget allowed \$2,000.00 for bonuses to staff members. If a bonus is to be given, the amount is the board's decision. The vote needs to be for each employee who is to receive a bonus.

7:15 PM — Regular session

Old Business

ACTION 1: Discussion and decision on fence between XYZ and ABC Condominium. ABC will pay for half of the cost (approximately \$1,000.00) to raise the fence height by two (2') feet. Board needs to vote if you want to pursue.

ACTION 2: Update on community center renovations.

ACTION 3: Update on hallway renovations at 3648. Carpet, paint, and tile work were authorized at the September meeting.

New Business

ACTION 1: Discussion and decision on the purchase of new radios for the maintenance staff. Prices quoted from Radio USA ranged from \$1,300 - \$2,800. Refer to our memorandum of September 17, 20XX for the details. No money has been budgeted for these radios. Current radios are over 12 years old and require an annual maintenance service.

ACTION 2: Letter received from Joyce Brannon of 3648 regarding the \$50.00 furnace rebate. Refer to her letter of September 4, 20XX. We need to provide a written response to Ms. Brannon about why she is not entitled to the rebate.

ACTION 3: Decision needed on the renewal of the trash removal agreement. No change in the price until July 1, 20XX, at which time the trash contractor would like to present a fee increase based on the dump fee. We budgeted \$5,150.00 per month. His current price remains at \$5,000.00. Recommend approval.

continued on next page

SAMPLE: Management Report, continued

Information items for board review. These items will not be discussed unless specifically requested by a director.

1. Extra decals stating "Aluminum Cans Only" were received and installed on the recycling containers.
2. Jones Carpentry installed the larger mailboxes at 3952.
3. The agreement with Jones Carpentry for the construction of the disabled access ramp and miscellaneous repairs has been fully signed. Work in the community center commenced on September 15, 20XX. Smith Architects prepared all the drawings for the ramp and submitted all papers to Humboldt County for the permit.
4. Correspondence summary:
 - A. Board, RE: Patrol activity report, September 20XX.
 - B. Board, RE: In-house maintenance, September 20XX.
 - C. Board, RE: Maintenance log, September 20XX
 - D. Residents, September/October 20XX newsletter.
 - E. Residents, building 3950, RE: Items in hallways, under steps, 8/26/XX. Removed, 9/04/XX.
5. Violations:
 - A. Powell, 3854, RE: Dog not on leash.
6. Hearing scheduled for Tuesday, October 15, 20XX:
 - A. Pirson, 3880, RE: Leak damages.
7. Fine Updates:
 - A. Savage, 3884, fine due to leak damages, balance due of \$85.00. Has not been making any fine payments. Charge remains on account. Lien filed for nonpayment of fine.

8. New sales:

DATE	ADDRESS	FEE	AMOUNT
08/17/XX	3886	\$276.00	\$66,000

SAMPLE: Action Item List

From Meeting of 6/01/20xx

MANAGEMENT

1. Main entrance light is still out and needs to be replaced.
2. Need signs to slow down traffic. Possibly "Dead End/No Through Street."
3. Towing signs needed.
4. Need lawn watered during summer months. One owner has volunteered to assist. Contact Ms. Hunt at 336-8212.
5. New dumpster needed for the area near buildings 6 and 7.

DEVELOPER

1. It was requested that the developer look into the parking problem and evaluate it. It was also requested that they look into cutting into the green space for more parking.
2. Crepe myrtles are to be placed outside unit 3850. Are they in the plan or does the association have to pay for them?

BOARD OF DIRECTORS

- | | | |
|---------------|--------------------------|---------|
| 1. Roof bids: | Commercial Roof Services | \$_____ |
| | Roof Services Corp. | \$_____ |
| | Verbal bid (individual) | \$_____ |

All prices are for twice-per-year inspection. Bids to be given to property committee for review and selection.

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Director & Manager Roles & Responsibilities



Directors: Roles & Responsibilities

- How do you know what your roles and responsibilities are?
 - Georgia Nonprofit Corporation Code
 - Bylaws



Directors: Roles & Responsibilities

- Powers & Duties (found in the Bylaws)
 - (1) preparing and adopting an annual budget;
 - (2) collecting assessments;
 - (3) hiring and firing property managers, landscapers, pool technicians, etc.;
 - (4) creating rules and regulations;
 - (5) imposing fines for covenant violations;
 - (6) opening a bank account for the association;
 - (7) filing suit to enforce the covenants; and
 - (8) keeping the books and records.



Directors: Roles & Responsibilities

- Directors
 - Elected
 - Hold voting power
- Officers
 - Appointed
 - Most likely a Director



Individual Positions

- President
 - Chief Executive Officer
 - Powers and duties incident to President of a Non-Profit Corporation
 - Establishes the agenda
- Vice President
 - Acts in President's absence



Individual Positions

- **Secretary**
 - Powers and duties incident to Secretary of a Non-Profit Corporation
 - Responsible for
 - Minutes
 - Books & records
- **Treasurer**
 - Pays bills
 - Creates the budget
 - Monitors collections



Effective Communication

- Publish a monthly newsletter
- Create a listserv
- Send out surveys
- Design a website



Suggestions for Creating a Sense of Community

- Mission Statement
- Informal Meeting
- Annual Social Event
- Holiday Party
- Independent Financial Review



Working with Managers

- How do you know what the manager's roles and responsibilities are?
 - Contract
 - Agency law
 - Actual authority
 - Apparent authority



Working with Managers

- Reports and other work product
 - Management Reports
 - Action Item Lists
 - Delinquent Status Updates



Working with Managers

- The Dual Role of the Manager
 - Manager as Support Staff
 - Manager as Professional Advisor



Handling Financial Constraints



Handling Financial Constraints

WARNING

None of the following actions should be implemented without first determining with your WNCW attorney what your association's authority is to exercise any of these actions and procedures that must be followed.

Do not assume your association has the authority, for doing so could result in lawsuits and damages awarded to owners.



Handling Financial Constraints

Getting Money from Tenants:

- Two primary ways:
 - Rental Assignment
 - Rent Garnishment



Handling Financial Constraints

Rental Assignment:

- By being subject to the Declaration, the owner assigns his/her right to the rental payments in the event the owner becomes delinquent on assessments.
- The Association “steps into the shoes” of the owner.
- Must be authorized in the governing documents.



Handling Financial Constraints

Rental Assignment:

- Requires proper notice
 - Indicate provision of documents allowing Association to collect rents.
 - Tell tenant that owner cannot evict them for paying rents to Association.
 - State that owner is getting a copy of tenant's letter.
 - Explain what will happen if tenant doesn't comply.



Handling Financial Constraints

Rental Assignment:

- What happens if the tenant doesn't comply?
 - Just like the owner, the Association would have to sue the tenant for the rental payments.



Handling Financial Constraints

Rent Garnishment:

– What is a rent garnishment?

- A rent garnishment is where a creditor, using the power of a judgment obtained from a Judge, seizes the rental payments before it reaches the hands of the owner.
- In order to garnish rental payments, you must obtain a judgment.
- In order to obtain a judgment, you must serve the owner with the lawsuit.
- In order to serve the owner with the lawsuit, you must sue the owner.



Handling Financial Constraints

Rent Garnishment:

- Much like a wage garnishment, the Association would file the garnishment at the Courthouse and have the tenant served by the Sheriff with the paperwork.
- If the tenant does not submit the rental payments to the Court, the tenant risks having a judgment entered against him/her for the full amount of the judgment against the owner.



Handling Financial Constraints

Rental Assignment vs. Rent Garnishment:

– When is it appropriate?

- Rental Assignments can be done at any time in the process, but are usually done before a lawsuit.
- Rent Garnishments can be done only after a judgment is obtained.



Handling Financial Constraints

“Encouraging” Payments:

- Beyond normal collection methods, is there anything else that can be done to get a delinquent owner to more quickly pay their past due assessments, fines, and fees?



Handling Financial Constraints

WARNING – Do Not Attempt*

“Encouraging” Payments:

- Access – in access-controlled communities, deactivate electronic devices that allow for automatic entry through vehicular gates.**
- Parking – suspend a delinquent owner’s use of common element parking spaces and tow or boot violators.**
- Use of elevators – suspend a delinquent owner’s use of the common element elevators, forcing use of stairs for ingress and egress.**
- Prohibit use of recreational facilities.**
- Suspend utilities paid for by an association as a common expense.**

* Without consulting with your WNCW attorney first.

** Authority to do these things must be in the Declaration.



Handling Financial Constraints

WARNING – Do Not Attempt

None of the following actions should be implemented without first determining with your WNCW attorney what your association's authority is to exercise any of these actions and procedures that must be followed.

Do not assume your association has the authority, for doing so could result in lawsuits and damages awarded to owners.



Covenant Enforcement







Handling Architectural Issues, Use Restrictions and Maintenance Responsibilities

- Make sure each Board members is familiar with the Governing Documents:
 - Declaration
 - By-Laws
 - Articles of Incorporation
 - Rules and Regulations / Design Standards



Handling Architectural Issues, Use Restrictions and Maintenance Responsibilities

- Ensure Owners are Familiar with the Governing Documents:
 - Welcome committee or property manager should provide copies of governing documents
 - Put documents on website
 - Highlight specific provisions in newsletter
 - Make sure Owners know forms and procedures



What are Your Responsibilities?

- To Enforce:
 - Uniformly
 - Promptly
 - Firmly



How do You Handle Architectural Issues?

- When must an Owner seek architectural approval?
 - Think exterior, if it is outside the house, then the Owner needs permission before making any changes.
- Establish design guidelines for the community.
 - Make sure they are consistent with architectural standards
 - Your manager can assist the Board



How do you Enforce Use Restrictions?

- Familiarize yourself with the use restrictions and covenant violations in the Declaration
- Know what is and is not allowed in the Community
- Know what the City or County ordinances allow and what Code Enforcement, Animal Control and Police will enforce
 - Public streets vs. private streets
 - Noise issues such as large parties
 - Threatening animals
 - Illegal drug use



How do You Enforce Maintenance Responsibilities?

- Know the difference between Owner and Association Responsibility:
 - Condominium and Townhomes
 - Define unit boundaries
 - Liability for repairs
 - Damages to interior of Unit
 - Absence of negligent actions by Association/other unit owner
 - Damages to common elements
 - Single Family Homes
 - Typically Owner is responsible for lots and landscaping



Notice of Violation to Owner

- Follow enforcement procedures found in governing documents
- Items to include in notification:
 - Specify violation
 - Action to correct violation
 - Time frame to correct the violation
 - Proposed sanction/enforcement
 - Hearing before the Board, if applicable, and contact information for hearing request



Enforcement of Violations

- Fines
- Right of Abatement
- Suspension of use/votes
- Boot or tow, if allowed
- Sue



Tips To Leave You With

- Individual members have no authority to act for the Board or ACC on architectural or covenant matters.
- Train directors and committee members on appropriate responses to situations.
- Document conversations.
- Send written confirmations recapping discussions.
- If a committee member disregards policies and creates problems, the Board should consider removing the member.



Tips To Leave You With

- Adopt policies that ACC requests will not be discussed with neighbors and other homeowners.
- Frequently publish information and forms related to modification and approval procedures.
- Know when to make your tax dollars work for the Community – call on Code Enforcement, the Police, or Animal Control as appropriate enforcement.
- Create a detailed maintenance responsibilities chart that can be distributed to owners.



**Thank
You!**

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