

Association Board Members Have Fiduciary Duties

<https://www.fmglaw.com/hoa/association-board-members-have-fiduciary-duties/>

The Georgia Property Owners' Association Act and an HOA's governing documents govern the creation and operation of a homeowners' associations ("HOA") and the duties of its board members.

A Board of Directors is typically responsible for managing all aspects of an HOA, but what some people may not understand is that board members have what are called "fiduciary duties" owed to the HOA members in the neighborhood.

A fiduciary relationship may be created by law, contract, or the facts of a particular case. The board members are in an important position of trust, and therefore owe a fiduciary duty to the HOA.

Board members owe fiduciary duties to the homeowners who form the HOA, including a duty of good faith and duty of care, among others. A board member's failure to adhere to its fiduciary duties could expose the HOA to legal suits and potential liability.

Under Georgia law, "a claim for breach of fiduciary duty requires (1) the existence of a fiduciary relationship, (2) breach of that duty, and (3) damage proximately caused by the breach."

Before volunteering to serve on a Board of Directors, one should consider the legal duties involved. Moreover, newly-formed and existing Boards need to fully understand and appreciate the governing documents and the duties imposed therein and under Georgia law, including fiduciary duties. These duties should be taken into consideration when making decisions that impact the HOA members. Dealing with these issues can be complex.

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Community Association Institute Board Member Tool Kit

The Board Member Tool Kit

A GUIDE FOR COMMUNITY ASSOCIATION VOLUNTEER LEADERS

THIRD EDITION



Qualities of a Good Board Member

A Strong Board Member

- Good character
- Strong integrity
- Calm judgment
- Willingness to serve
- Committed to the best interests of the community as a whole
- Relevant experience or background
- Previous volunteer service
- Strong “people skills”

An Inappropriate Board Member

- Unable to put the welfare of the community first
- Works behind the board to run things his or her way
- Impulsive or quick tempered
- Has a personal or hidden agenda
- Puts individual interests first
- Little or no experience in management, leadership, or service
- Unable to work with others for the common good
- Poor interpersonal skills

How do you succeed with such a challenging assignment?

Put your personal preferences and circumstances aside.

When you make decisions as a board member, you have an obligation to work in the best interest of the entire community, regardless of how they affect you personally.

Educate yourself. Part of learning how to be a good board member will come from trial and error; but, you can reduce the errors and the time it takes you to get up to speed by attending seminars, reading books, networking with community association board members, asking questions of your manager, accountant, or attorney, downloading free materials from the web, and much more. [See Appendix A for a detailed list of educational opportunities and resources.]

Know the difference between the roles of the board and the manager. Boards set policy and make policy decisions. Managers implement the board’s directives and take care of operations.

Stand united. Once the board makes a decision, stand behind it and make every effort to see it succeed—even if you voted against it.

Don't allow personality differences to interfere with the work of the board. Be cooperative, positive, and make every effort to stay focused on the needs of the community.

Be reasonable. Although boards have a big responsibility, they needn't be over zealous or inflexible to fulfill it. Avoid snap decisions, act rather than react, and deal with real problems, not nuisance situations.

Boards vary in size, but most comprise five to seven elected homeowners. Among themselves they appoint officers, of which the three primary positions are president, secretary, and treasurer. (Each of these officer roles is explained in more detail in the following sections.) Decisions are made by the board as a group, not by individuals or by officers.

WORKING WITH COMMITTEES

Boards can't always accomplish everything that needs to be done—particularly in large communities. That's when committees of residents become especially valuable. There are two types of committees.

Ad hoc committees:

- Task oriented
- Disband when the task is completed

Standing committees:

- Function oriented
- Remain in force indefinitely

The duties of a committee vary from one community to another, depending on the task, when it should be completed, how many and what kinds of recommendations the board wants from the committee, and how much authority the committee has been given by the board. Boards should develop a set of clearly articulated guidelines for the structure, function, and responsibility of