

CHAPTER 2

BEST PRACTICES FOR RUNNING AN ASSOCIATION

We are frequently asked how boards should conduct themselves to fulfill their obligations. Our recommendations are:

Awareness

Read your governing documents and follow them. The first thing that any director of a condominium association should do is read the Declaration, Bylaws, Rules and Regulations, and/or CC&Rs that make up the association's governing documents. A director's duty is to comply with and enforce the rules contained in these documents. These documents will outline some specific duties such as arranging for annual CPA audits and acquiring liability insurance. Some of these regulations are actually restatements of obligations that the association has under state law. As you perform your duties, continue to consult the governing documents for guidance.

Be aware of your community. Some people drive into their garage, walk from their car into their home and never venture beyond their unit. They do not know if there is mold forming on the outside of their building, if the gutters have fallen off, or if their next door neighbor has fifteen cats. This should not be you. Know your neighbors and residents. Look at the buildings. Examine the Balance Sheets and Financials. As a director, you have both a duty to yourself and the association to have a general awareness of the building(s), the community, and the financial condition of your association.

Good Communications

Give notice of meetings. The law requires you to give notification of all meetings. Keep a copy of each notice, to whom it was sent and how it was sent. List the planned topics of discussion in the notice, perhaps by providing an agenda.

Communicate with the owners. Ask people what they think is needed. Keep the unit owners informed about important matters other than the meetings. For example, inform them when the parking lot gate will be out of service for scheduled maintenance. It will then be harder to blame the board if they are inconvenienced.

Put it in writing. Convey important information in writing. Keep meeting minutes. Write newsletters, e-mails or letters. Post to a bulletin board or an association web-site. Distribute minutes from association meetings either on paper or electronically. If there is no written record, then it never happened. Keep records for a reasonable period of time. Different records must be

kept for different periods of time, so it may be wise to ask your property manager or attorney about a record retention policy.

It may be helpful for the association to adopt a process for creating and keeping records. For example, if the association has a meeting minute book, adopt a practice for making sure the approved meeting minutes are signed and, along with any important attachments, are put into the book after each meeting. Correspondence with owners, financial records and other important documents can also be preserved in the book. It's not enough to know that a writing exists somewhere; you must also be able to find that writing when you need it.

Property managers may be able to collect much of the correspondence, but the obligation is on the Board to make sure that it is done adequately. Printed copies of e-mail communications may assist in keeping a record of what has happened in the past, but remember that only the approved minutes reflect what the Board or the Association has actually done.

Run Your Meetings Properly

Conduct meetings according to a set agenda. Whether or not you're required by law or the bylaws of your association to prepare a meeting agenda, do so anyway. It makes taking minutes easier, helps deal with matters in an orderly manner and ensures that issues are not forgotten. Keep a copy of the agenda in the record.

Keep good minutes. Minutes are the recorded history of the proceedings of your association and should accurately summarize the topics discussed and the decisions made at meetings. They should not be overly verbose, but you want a reader to understand how the association arrived at decisions. Minutes should contain records of all motions, nominations, votes and actions taken. Minutes and supporting documents like reports from the property managers and consultants are the paper trail that will support you if someone accuses you of acting unreasonably.

Don't conduct association business outside of meetings. Important issues are best discussed and voted on at meetings. It allows for people's opinions to be swayed by debate and ensures that all the voters have the relevant information. Meetings can be called on very short notice if necessary. Failing to hold meetings for votes on important matters has the potential to create numerous problems.

A less desirable alternative that may be available to associations that do not have open-meeting requirements is to conduct a vote of the board by e-mail. This is less preferable since less debate is likely to occur this way, but if all members are unanimous on an issue, it may solve scheduling problems. If an e-mail vote happens, those e-mails should be printed and entered into the record of the association. Best practice would be to ratify the e-mail vote at the next regular meeting.

Budget & Plan for the Future

Make a budget and keep to it. Many associations run into difficulties because they do not budget wisely or because they fail to keep to their budget. The main operating account of the association should have enough to pay for all anticipated expenses and some amount of *un*anticipated ones, too. When energy prices went up recently, many associations were not prepared to deal with the large increase in utility costs. Many associations don't have adequate operating reserves to pay the insurance deductible in the event of a fire or water leak. An association should never have to levy a special assessment for basic monthly expenses such as utilities. Well run associations have adequate reserves in their operating accounts for normal expenses and in their maintenance reserve accounts for major repairs to the buildings.

Your governing documents may have requirements for a budget. Once your board approves the budget, make reasonable efforts to adhere to it. You may have a duty to provide a budget summary to members after that proposed budget is approved by the board. See RCW 64.34.308(3). Good communication dictates providing the budget to all owners no matter what.

Keep track of the money. The Washington Condominium Act requires that associations have sufficient financial records to comply with generally accepted accounting principles. Condominium associations need to have an annual CPA audit if there are fifty or more units. RCW 64.34.372. Even though smaller associations have the option to vote and waive the audit, make sure that if an audit *were* to be done, the financial records would be in order. If you choose not to obtain an audit, make sure you appropriately document the vote by owners of that decision.

Don't allow the association's reserves to go dry. It is becoming common to have professional reserve projections for major maintenance produced so that associations can plan for large expenditures years in advance; typically called a "Reserve Study". This is a good idea because it gives a professional opinion on the condition of the buildings and upcoming major expenses. Don't use these reserves to make discretionary expenditures like lobby remodels or security system upgrades that will leave the association's reserves inadequately funded.

Good Decision-making

Directors are meant to Direct. Being passive is not what association directors are elected for. Boards must be aware of what is going on with the association. Failure to take actions that are needed may result in harm to your association and liability to you. Sometimes doing nothing is the right course of action, but in those circumstances you need to *decide* that inaction is the best course and document that decision.

Get outside advice when you need it. Association directors are often called upon to make decisions in areas of expertise that they are unfamiliar with. Being elected by your neighbors to run things does not mean that you automatically have knowledge of accounting, construction, etc. Courts have found that adequate investigations and information are necessary in order for actions to be considered reasonable. If you know you are not competent to evaluate structural

damage to a building, the logical thing to do is to get someone who is qualified to advise you and make recommendations. Then you can make an informed decision.

Don't let important matters wait. If informed of safety issues, budget shortfalls, or other issues in the common areas, you should endeavor to be as proactive as possible and to attend to any concerns in an appropriate manner.

Enforcing Rules

Be consistent in enforcement. When enforcing the rules in your association, treat everyone equally. Selective enforcement may lead to the waiver of a rule or to liability for you personally and for the association.

Balance free use and enjoyment. There needs to be a balance between the free use and enjoyment of one's own property and the rights of one's neighbors not to be bothered by those activities. One of the functions of a condominium association is to help ensure that neighbors act in accordance with rules that everyone agreed to when they purchased. (The Declaration, Bylaws and Rules & Regulations.) It is your job to find and enforce that balance, with the use of the governing documents and input from your community.

Seek compromise. Enforcing rules just for the sake of enforcing rules neither endears you to the owners nor protects you and the association from liability. If an owner makes a reasonable request for an exception to a rule and there is no particular reason for refusing the request other than the existence of the rule, try to be accommodating. Sometimes a compromise will avoid costly legal expense later on. It may also preserve good relations among neighbors which is always a positive result.