

You Are an Association – Now What?

Purpose of a Community Association – the primary purpose of a community association is to provide for the governance, business operation, and communal aspects of the association. This is achieved by administering, maintaining, and enhancing a residential real estate development.

Sources of Legal Obligations for a Community Association – legal obligations of corporations that are community associations are derived from federal, state and local statutes, regulations and case law; legal documents unique to the community association that bind the association and its owners; lenders requirements; and standards set by professional bodies (example, auditing standards set by the AICPA).

Business of the Corporation – Homeowner Associations are non-profit corporations governed under the laws of the State of Washington. The RCW Title 24 governs Nonprofit Corporations and Associations. Unless your association is a condominium, RCW 64.38 applies to your association. If you are a condominium, then RCW 64.32, or 64.35 will apply, depending on your construction date. If your Covenants do not address an issue, then the RCW applies. In some cases, the RCW may over-ride, as may Federal Laws (with regard to discrimination, for example, or satellite dishes). As a corporation, you have responsibilities to maintain your corporate licensing, pay taxes, prepare financial statements and audit them, keep records of your business decisions, and provide details of business decisions to owners.

The Governing Documents – the purpose of a community association's governing documents is to provide for the legal structure and operations of the community. The

documents define the rights and obligations of both the community association and its owners; create a binding relationship between each owner and the community association; establish the mechanisms for governing and funding the community association's operation, and set rules and standards for the protection of both owners and the community; enhancement of property values and promotion of harmonious living.

Roles and Responsibilities of Owners - the basic authority in a community association lies with the owners. In order for the association to govern effectively, the owners elect a board of directors, to act on their behalf. Owners have very few direct powers...generally they have only the voting power to elect and remove directors; amend any of the governing documents, except board resolutions; approve special assessments or capital improvements (based on governing documents).

Owners have the responsibility to:

1. Read and comply with the governing documents of the community
2. Maintain their property according to established standards
3. Treat association leaders honestly and with respect
4. Vote in community elections and on other issues
5. Pay association assessments and charges on time
6. Contact association leaders or managers, if necessary, to discuss financial obligations and alternate payment arrangements.

Owners have the right to:

1. A responsive and competent community association.
2. Honest, fair, and respectful treatment by community leaders and managers.

3. Participate in governing the community association by attending meetings, serving on committees, and standing for election.
4. Access appropriate association books and records.
5. Prudent expenditure of fees and other assessments.
6. Live in a community where the property is maintained according to established standards.
7. Fair treatment regarding financial and other association obligations, including the opportunity to discuss payment plans and options with the association before foreclosure is initiated.
8. Receive all documents that address rules and regulations governing the community association—if not prior to purchase and settlement by a real estate agent or attorney, then upon moving into the community.
9. Appeal to appropriate community leaders those decisions affecting non-routine financial responsibilities or property rights.

Role and Responsibilities of Board of Directors – the board is charged with the ultimate responsibility and authority for operating the community association on behalf of its owners. The board’s legal authority to act is found in state statutes and governing documents. It is the role of a board to set the policies, standards, procedures, programs, and budgets for the community association.

The board has a fiduciary relationship to the community association. Its fiduciary duty requires directors to act in the best interests and for the benefit of the corporation, avoid conflicts of interest and acting out of self-interest. They are also required to act as reasonable people in managing the association’s affairs. It is the board that is

ultimately responsible for management of the association. They can delegate to a manager, but the board is still responsible to the owners.

Board members have the responsibility to:

1. Fulfill their fiduciary duties to the community and exercise discretion in a manner they reasonably believe to be in the best interests of the community.
2. Exercise sound business judgment and follow established management practices.
3. Balance the needs and obligations of the community as a whole with those of individual owners and non-owner residents.
4. Understand the association's governing documents and become educated with respect to applicable state and local laws, and to manage the community association accordingly.
5. Establish committees or use other methods to obtain input from owners and non-owner residents.
6. Conduct open, fair, and well-publicized elections.
7. Welcome and educate new members of the community—owners and non-owner residents alike.
8. Encourage input from residents on issues affecting them personally and the community as a whole.
9. Encourage events that foster neighborliness and a sense of community.
10. Conduct business in a transparent manner when feasible and appropriate.
11. Allow owners access to appropriate community records, when requested.
12. Collect all monies due from owners and non-owner residents.
13. Devise appropriate and reasonable arrangements, when needed and feasible, to facilitate the ability of individual residents to meet their financial obligations to the community.

14. Provide a process that residents can use to appeal decisions affecting their non-routine financial responsibilities or property rights—where permitted by law and the association’s governing documents.
15. Initiate foreclosure proceedings only as a measure of last resort.
16. Make covenants, conditions, and restrictions as understandable as possible adding clarifying “lay” language or supplementary materials when drafting or revising the documents.
17. Provide complete and timely disclosure of personal and financial conflicts of interest related to actions of community leaders, e.g., officers, the board, and committees.

Financial Management of the Association – there are many financial aspects of managing an association. The process starts with recognition of all the **common assets** that need to be maintained by the association on behalf of the ownership. Once all the responsibilities are known, a **budget** is prepared by the board, sometimes with the assistance of the association manager. The cost of all the maintenance is assessed to the owners, based on the budget and according to the CCRS.

If the common assets are extensive, the board may hire a consultant to help plan the amount of savings that will need to be made to provide for future maintenance. This is called a **Reserve Study**. Amounts saved for future repairs are called reserves. A prudent and fiscally responsible board will have a plan for future maintenance and begin to build the reserves necessary to fund future maintenance. On the annual budget, the **“Net Earnings”** is the amount estimated to be available for savings or reserves at the end of the year.

Administration of the Association – many associations employ a Management Company to direct association operations. The board continues to set the policies and establishes a direction for the association and the manager sees that the policies are implemented. Some of the ways that professional managers assist boards are:
Coordinating and supervising maintenance activities like grounds maintenance and other repairs.

1. Alerting the board when legal assistance is needed.
2. Advising the board of regulatory issues and compliance requirements: fair housing procedures, fair debt collection practices, FCC antenna regulations.
3. Coordinating member/board communication; preparing a newsletter, facilitating meetings.
4. Managing office operations: accounts payable and receivable, bookkeeping, filing, member calls and questions.
5. Managing association finances: budgeting, collecting assessments, analyzing reserves, pursuing delinquencies.
6. Working with accountants and auditors to maintain the association's financial viability.
7. Working with insurance companies to file or settle claims.
8. Working with state and regulatory agencies as an advocate for the association.
9. Carrying out delegated officer duties: taking meeting minutes, preparing agendas, etc.
10. Preparing proposals and screening contractors.