

# Living Up to Your Fiduciary Duty as an HOA Board Member

Though this may be news to many homeowners diligently serving on association boards throughout Nevada, by stepping up to the plate and agreeing to volunteer your time and effort, you're agreeing to act as a fiduciary on behalf of your fellow owners. That's not just a big word. It carries legal consequences if you—even unknowingly—breach that duty. Here's what you need to know about fulfilling your fiduciary duty as an association board member.



## What Fiduciary Means

Being a fiduciary means that you have an obligation to take off your hat as a homeowner and put on your hat as an officer of a corporate board and use your best business judgment. That's the judgment that best applies to the facts you're dealing with and protects the fiscal and structural security of the building and the association and the well-being of its inhabitants.

When you volunteered to serve your community association as a board member, did you realize you were agreeing to set aside your own interests and act as a fiduciary on behalf of the entire association? Are you confident you know every scenario where you might trip up and expose yourself to personal liability by failing to live up to this important duty?

Set aside an hour of your time to learn what you need to know and ensure you're not risking your own financial security by making common—but easily avoidable—mistakes while volunteering as an HOA board member.

When you're acting as a fiduciary, you're serving in a representative capacity, and you must put the interest of the association's homeowners collectively first. You must also exercise sound business judgment and a healthy dose of common sense.

There's also a confidentiality aspect of being a fiduciary. For example, if there's an attorney-client privileged communication between the board and its attorney, by telling a third party that you were in a meeting with an attorney and this is what

was said, you've just blown the confidentiality of that conversation. Or a lot of times boards want to keep initial discussions on assessments and contractual obligations confidential.

Attorneys have encountered confidentiality issues first-hand while representing an association that has been sued by a homeowner. The association split into a couple of factions. One group supported the homeowner, and the other doesn't. Attorneys have to explain to board members that they were the opposing party in the lawsuit brought by the homeowner and that regardless of how they felt about that homeowner, if they were at a meeting at which the lawsuit was discussed, they couldn't tell the homeowner about the discussions.

## **Beware Other Breaches**

A conflict of interest can also become a breach of your fiduciary duty. If there's a matter before the board in which you or a family member has an interest, you should recuse yourself. You need to avoid even the appearance of impropriety.

You can also breach your fiduciary duty by failing to do the regular tasks that are involved in overseeing an association. "Board members can breach their duty when they don't hold regular meetings as required by Nevada law, don't pass their budgets properly, or treat some owners differently than others. There could be one owner that the board lets slide on assessments, while another is sent a late notice in accordance with the collection policies required by Nevada law.

Though the term "fiduciary duty" sounds amorphous, it's not that hard to apply in everyday association management. You'll be safe if - regardless of the task you're performing as a board member - you execute your responsibility in good faith, with good judgment, without conflict, and by always putting the association's interest above your own.

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