

COMMUNITY GOVERNANCE

The three bodies of community governance:

- 1) **Owners:** Only direct power is to vote. Vote for directors, amendments, certain special assessments or assessment increases as per the documents of each Association. Like the United States of America an Association is set up with a "republic" system.
- 2) **Board of Directors:** The Board has the most direct power to directly govern the Association. The governing documents, i.e., the Declaration of Covenants, Conditions & Restrictions or the Declaration of Condominium, the Articles of Incorporation and the By-Laws set the responsibilities and power of the Board. The Board has a fiduciary duty, i.e., to act for the benefit of the community as a whole. They may not act in self-interest.
- 3) **Committees:** Committees study issues and may make some decisions but only under the power of the Board. Committees have no power themselves.

Role and Responsibility of the Owners: Owners should pay their assessments on time. They should follow the Rules & Regulations of the Association. When they vote their vote should be an "informed vote", learning something about the Board candidates they vote for. Remember, once they are voted in they will be making the decisions for the members. Study any other issues that are on the agenda for annual meetings. Come to Board meetings if there are issues that need to be brought before the Board. Volunteer to help the Board on committees or special projects, especially in areas of personal expertise.

Role and Responsibility of the Board: Basically in a nutshell make most of the decisions for the Association. The Board should always use the "business judgment rule", using reasonable business judgment in make Board decisions. This way a court will not consider the Board negligent in its fiduciary duties. The Board is responsible for the care, maintenance, and enhancement of common property. It is responsible for community finances and risk management, including proper insurance and reserve fund development. It must establish, enforce, and interpret rules and regulations. It must oversee employees, management companies, and volunteers. And it must work for the preservation and promotion of community harmony.

Role and Responsibility of Committees: Aid the Board in its work and involve more members in the governing of the Association, provide a training ground for possible future Board members and all committee members must be appointed by the Board even if they are volunteers.

- **Mandatory committees:** Committees the governing documents require to exist. May be such things as finance, nominating committees, architectural review, etc. Sometimes an Association may have standing committees.

- **Ad hoc committees:** Committees that deal with one particular issue that once completed removes the need for the committee. An example would be a committee to make a certain landscaping improvement.
- **The Board liaison system.** It is critical that the Board knows what its committees are doing. If a Board member is assigned to be a liaison he or she provides communication to and from the Board. The Board member should not actually sit on the committee.

Three forms of management:

- 1) **Volunteer or self-management:** The Board and committees manage the entire Association themselves. It is important that the members keep up with current legal requirements.
- 2) **Association-employed manager:** A dedicated manager solely employed through an employment contract. A community has to be large enough to afford a dedicated manager.
- 3) **The management company:** A company that manages a number of Association through management contracts. Much more affordable to most Associations since normally contract costs vary with the size of the Association.

Rule Development:

A rule is a specific statement of required behavior whose violation carries a penalty. Architectural guidelines are rules that apply to the appearance of a lot or structure. They can apply to both common property and individual lots or units. They also apply to residents, owners and tenants, their guests and visitors.

The Hierarchy of Community Rules:

- Federal statutes, regulations, and court decisions
- State statues, regulations, and court decisions
- Local county and city statutes, regulations, and court decisions
- Declaration, CC&R, Master Deed, Proprietary Lease, or Occupancy Agreement
- Articles of Incorporation (if incorporated)
- Bylaws
- Board resolutions
- Other rules and regulations.

In a conflict of rules the higher authority always takes precedence.

Any rule adopted by resolution of the Board of Directors needed certain criteria.

- The rule cannot conflict with a higher authority.
- There must be a need for the rule which is for the general benefit of the community.
- The rule must be reasonable.
- The rule must be enforceable by normal, legal means.

The rule must apply evenly to all members.
To be enforced the rule must be published to the membership.

Violations must be handled by due process.

Cease and desist, i.e. the warning letter.

Possibly a second warning letter. This one should give the penalty and when and how the penalty will be applied. (The first letter may also do this.)

Finally a notice of the penalty is sent.

There should be an appeals process for the alleged violator. A community should have a rules or violation committee to adjudicate disputes. If the violator wants a further appeal he or she can then go to the Board. In this manner if the violator wishes to go even further to civil court the Association can show they have applied full American due process.