



Master Being a Board Member

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Directors & Officers

Distinction Between Directors & Officers

- Directors (ultimate decision-makers)
- Officers (executes Directors' decision)
 - President, VP, Secretary, Treasurer, etc.



"Well, let's get started now we've got a quorum."

Director/Officer Standard of Care

- Standard of Care
 - Act in good faith
 - In best interest of association
 - With the care that a reasonable prudent person would exercise under similar circumstances

Uniform Actions & Enforcement

Business Judgment Rule

Legal Protections for Directors

Indemnification provided by governing documents

Nonprofit Act statutory indemnification

Directors & Officers coverage (“D&O”)

Can always be named in a suit but should be defended by the Association and likely to be dismissed

ONLY available if operating in good faith!!!

Applicable Law and Documents

Governing Law



Federal Laws

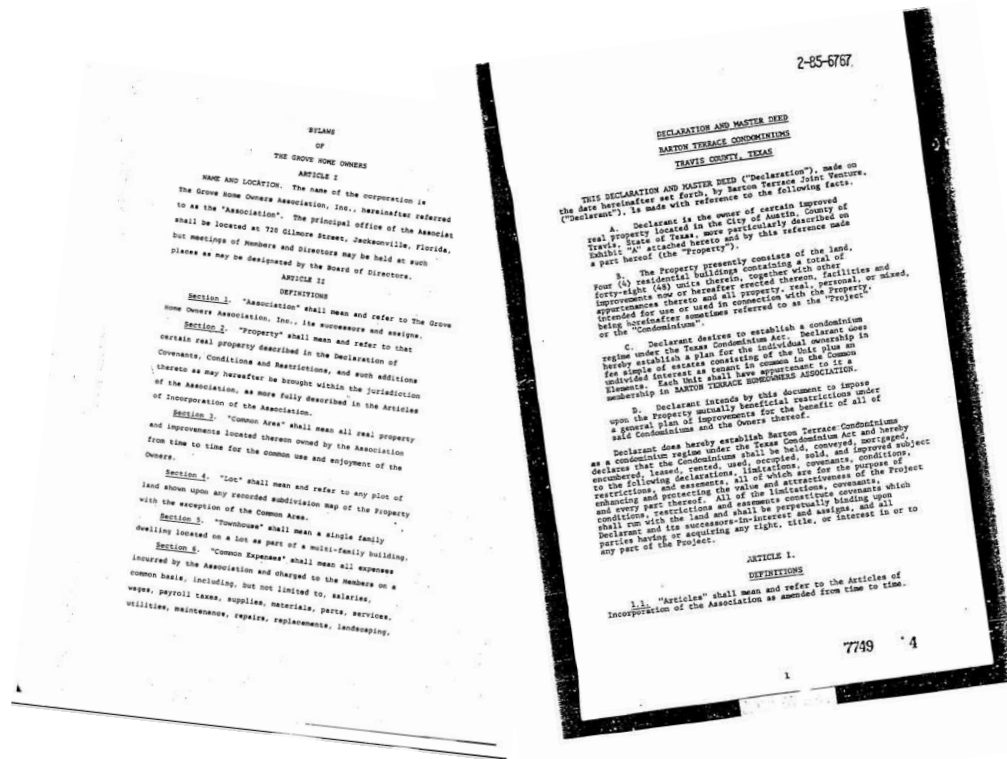


State Statutes



Municipal Ordinances

Governing Documents



Declaration/Master Deed



Articles of Incorporation



Bylaws



Board Policy

Enforcing the HOA Governing Documents

Know Your Enforcement Options

The I'll Do it Myself Approach

In the event an Owner of any Lot shall make unauthorized changes the Board of Directors or ARC shall have the right, through its agents or employees, to enter upon the Lot and repair, maintain, and restore the Lot to the condition existing prior to the changes.

Injunctive Relief

Court order requiring owner to do/not do something. Often expensive; time-consuming.

Fining

Most efficient, least expensive, and most effective.

Rule & Covenant Enforcement

Fundamental due process requirements are Notice and the Opportunity to be Heard

Procedure

- Notice of the Violation
 - How do we send it?
 - Email?
 - Regular Mail?
 - Certified Mail?
 - When do we send it?
 - At least ten days before any action is to be taken?
- Opportunity to be Heard
 - Hearing?
 - Opportunity for a Hearing?

*Any specific requirements in your documents

Steiner v. Windrow Estates Homeowners Association (2011) *NC Case - Livestock



ARC Basics

- Read your documents.
- Consistency and in harmony – What does it look like?
- What duty does the ARC have when it denies an application?
 - Respond in writing
 - Valid reasons for denial
 - Offer suggestions?





Board Meetings

Board Meetings

When? Where? How Often?

Quorum

- Proxies?
- Telephone conferencing?
- Video conferencing?

Avoiding the 4-Hour Meeting/Having Better Meetings

- Presiding Officer is key
- Have (and use) an agenda
- Park digressions
- Equalize discussion
 - The member who won't stop talking
 - The member who won't say anything
 - *"Is there a motion?" The magic phrase*

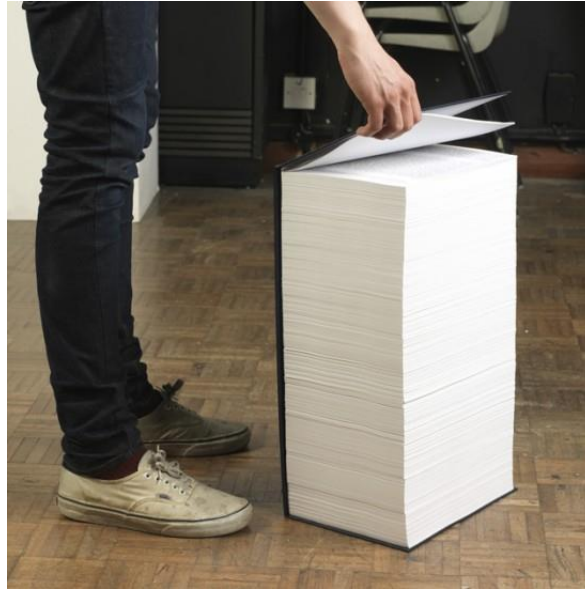
Action Without a Meeting

Action must be taken by all members of the Board, i.e., unanimous consent

- Evidenced by written consents describing action taken
- Best to be included in the minutes (i.e., at next meeting)

A Minute on Minutes

- Meeting minutes are a record of what was done at a meeting, not what was said.



Closed Sessions or Meetings

Issues that if discussed in public could violate privacy laws, harm the association, or cause embarrassment to a party:

- Consulting with legal counsel
- Discussing litigation or prospective litigation
- Reviewing sensitive information such as delinquent dues
- Discussing contract terms
- Handling disciplinary matters or rules violations by members

Closed Sessions or Meetings

What are best practices for keeping transparency with Board meetings?

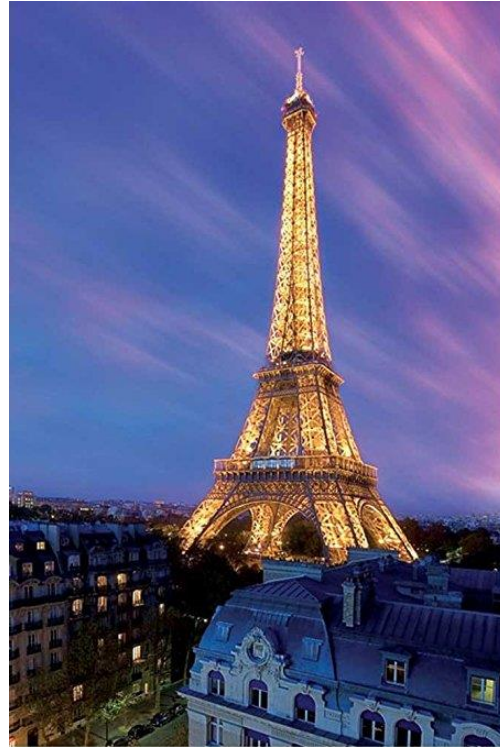
- Open portions of meetings on regular basis
- Minutes kept appropriately; publish minutes consistently?
- Email blasts
- Other town hall type meetings

Board Members
Beware!

Trouble Spots for Boards

1. Acting Without Proper Formality / Acting Alone
2. Not being fair / perceived unfairness
3. Not Utilizing Your Professionals
4. Fair Housing Act minefields

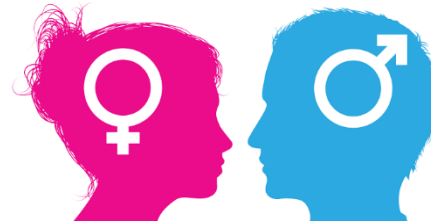
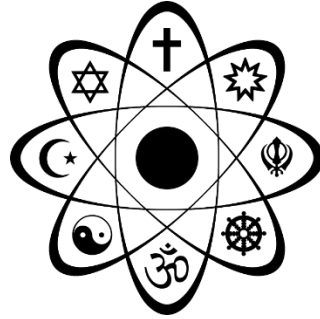
Acting Alone –The Rogue Board Member



- Antenna Tower Case
- Bodine v. Harris HOA

Fair Housing Acts

- Race
- Color
- Religion
- Sex
- National Origin
- Familial Status
- Handicap



Protected Classes – Familial Status

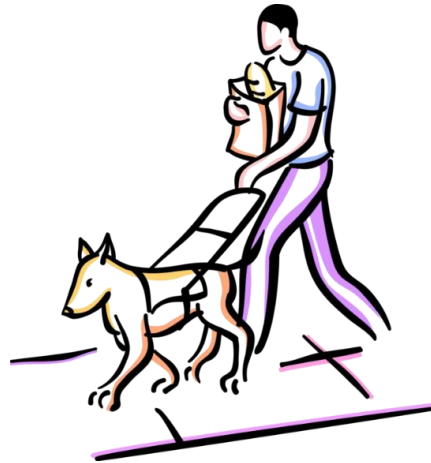
- Policies and procedures regarding minors.
- Any language regarding conduct more specific to minors.
- Language regarding personal property related to minors.



Protected Classes - Handicap

Discrimination against handicapped persons can include not allowing reasonable modifications or reasonable accommodations.

- Reasonable modifications are to the real estate property.
- Reasonable accommodations are to rules, policies, practices, or services.





Awkward
Family
Photos



Questions





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