

Section 2

Roles & Responsibilities

Condominium associations are composed of different groups of people working together. To run an association effectively, the condominium association leaders must understand the roles and responsibilities of these groups and how they interact. The groups are comprised of: developers, unit owners, board members, officers, and committees.

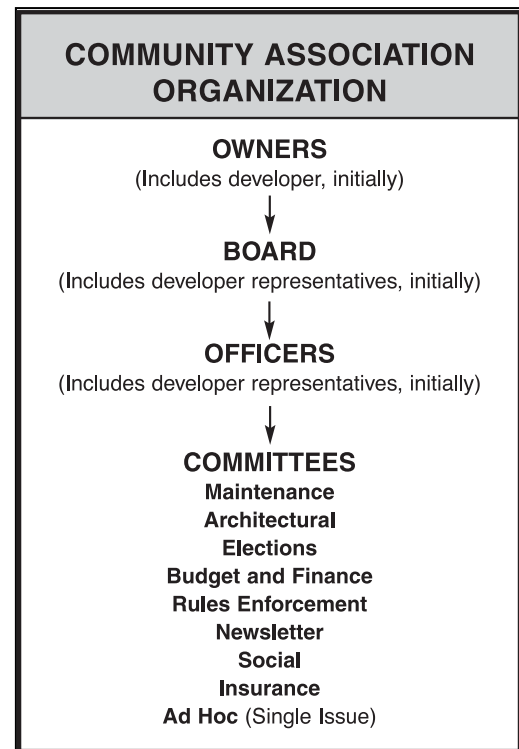
Role of the Developer

The developer prepares the governing documents and creates the structure of the condominium association. He or she creates the initial association budget and basic administrative procedures. The developer is also responsible for maintaining financial, legal, and personnel records; minutes of board and association meetings; and documents relating to the creation of the community.

The developer controls the condominium association during the early phase of the community. He or she has the most votes because in the early phase the developer owns the most units or apartments. Also, the documents may give the developer more votes per unit than the other owners. In this phase, the developer’s representatives usually constitute a majority of the board and of the Architectural Committee.

One of the developer’s primary goals is to make sure that his or her investment is protected. While the developer controls the board, however, the developer also owes a fiduciary duty to the owners. Therefore, the developer may not act solely out of self-interest. A developer-controlled board is held to at least as high a standard as a board controlled by the owners.

Some provisions in the governing documents—such as the right to add buildings to the community, the right to have easements for access to sales offices, and the right to



display “for sale” signs—apply only to the developer. Most of the provisions, however, apply to both the developer and the owners in the same manner.

The developer usually owns units in the community when he or she transfers control to the owners. The developer best protects his or her investment by ensuring smooth operation of the association after transferring control to the owners. Therefore, wise developers not only recognize their legal responsibilities to the community, but also understand that the transition process (the process of transferring control to the owners) begins with the first sale.

A knowledgeable developer educates potential and new purchasers about the rights and obligations of owners in a condominium association. The condominium association will run more smoothly if the owners know before they purchase that they are obligated to pay assessments and adhere to restrictions.

Developers should also look for leaders among the initial purchasers and train them to govern the condominium association. Early owner involvement encourages stable governance after the developer transfers control.

Transferring Control to the Owners

The developer must eventually transfer control of the condominium association to the unit owners. Under Florida law, once the developer has sold 15 percent or more of the units, the unit owners are entitled to elect no less than one-third of the members of the board. At the time that unit owners elect a majority of the members of the board, the developer shall relinquish control.

When this occurs, there are a number of records which must be turned over to the owner-controlled board of directors—see Section 718.301 for full turnover requirements, including percentage of sales and other triggers of turnover. Generally, the developer should make sure the owner-controlled board has copies the Articles of Incorporation, the declaration (master deed), the bylaws, the rules and regulations, and the Public Offering Statement (public report). This history of creation will be of assistance to the board in maintaining the property and making future improvements and repairs. It is important to note that the developer is required to maintain the records listed below and to turn them over to the owner-controlled board.

History of the Creation of the Development

Plans—The developer should provide copies of the approved tract maps, building and landscape plans, and specifications showing all plants and irrigation systems. The developer also should provide “as-built” plans for all building, irrigation, and mechanical systems. These documents will be important if the board subsequently decides to improve the property, or if it is required to reconstruct the property after a disaster.

Governmental Approvals—There are a number of approvals that the developer needed to obtain to develop a condominium association, and the new board should receive a copy of all governmental approvals. These approvals may include a statement from the appropriate governmental agency that all regulatory signs are installed according to the law, and confirmation that fire hydrants have been placed according to the local government maintenance plan.

History of the Association

Financial—The developer should give the new board a copy of the association’s budgets and a complete audit of the association’s books, ledgers, and bills.

Board Meetings—The new board members will need a complete set of board minutes and resolutions.

Membership List—They will need a list of all the owners.

History of the Physical Operation

In addition to the building and landscaping plans, the developer should give the board a schedule of the expected life of materials, copies of bonds or warranties, and a list of manufacturers of products used in the condominium common elements.

History of Contractual Relations

The board also will need all contracts signed by the developer on behalf of the association and a list of the construction subcontractors and principals within each company. The list should include the name of the responsible person and the names of the officers of the general contractor and developer, if they are different. If the owners have been trained by the developer and have received copies of the above documents, they should be ready to effectively govern the association.

Role of the Owners

Although board members run condominium associations, governing documents and the law often reserve certain powers for the owners. For example, there are often provisions in the documents and the Florida law stating that the owners must elect the board members. Also, some governing documents only permit owners to fill vacant positions on the board.

It is the owners--not the board members--who generally have the power to amend the declaration (master deed), the bylaws, and the Articles of Incorporation. The owners also may have the power to amend particular provisions of the bylaws, such as those dealing with the assessments and sale of common property. This usually requires consent from a specified percentage of the owners.

Along with these rights come obligations. The owners are obligated to adhere to the restrictions imposed in the governing documents. If they do not, a court can force them to comply.

Owners are also obligated to share in the financial operation of the condominium association by paying their assessments on time. If they do not, the association may exercise their lien rights and claim the lien on the owner’s home. They may lose their home through foreclosure. The lien provision will be provided for in the declaration.

Although the owners do not have a legal obligation to actively participate in the association, the association will not be able to function if no one participates. Therefore,

it is important for the board to foster a sense of community spirit to encourage participation.

Role of the Board

The board manages the condominium. The board's authority to act on behalf of the association is not, however, unlimited. The governing documents—and sometimes the law—grant the board the authority and obligation to act. They also restrict the board's ability to act. Provisions that *permit* the board to act use words such as *may*. Provisions that *obligate* the board to act use words such as *shall* or *must*.

The role and scope of authority of the board may be broad or specific, depending on the association's governing document. Some governing documents and Florida law provide the board with the same authority as a corporation. Others precisely state the powers of the board.

In some situations, the governing documents and Florida law may not only permit the board to act, they may *require* it to act. For example, Florida law and the governing documents require the board to purchase insurance and require the board to distribute financial statements to the members.

Finally, Florida law and the governing documents can *prohibit* board members from acting. For example, the governing documents may state that the board is not permitted to increase assessments beyond a certain amount without the approval of a specified percentage of the owners. Statutes may prohibit the board from amending particular provisions of the governing documents or from disciplining owners without affording them a fair hearing. In one case involving a Florida condominium association, the court found that the board acted without authority was when the board sold property without following the procedures provided in the governing documents.

The **Federal Fair Housing Act Amendment of 1988** is one of the few federal statutes that restrict the board's authority to act. It provides, among other things, that associations may not discriminate on the basis of familial status or handicap. Because of the Fair Housing Act, a Florida court ruled that a community association, which did not qualify as senior housing, was not permitted to enforce either a restriction prohibiting children from using the pool except between the hours of 11:00 a.m. and 2:00 p.m. or prohibiting children below the age of five from using the pool.

If the board acts when it does not have authority to act, fails to act when it is obligated to do so, or acts when it is prohibited from doing so, its actions may be invalid and board members may be liable. And if a court concludes the board members are liable, they may even have to pay the judgment out of their own pockets.

Examples of the powers generally granted by the governing documents and state law include:

- the authority to set goals, standards, and policies for the association;
- to enforce the governing documents;
- to maintain the property;
- to maintain the association's financial stability;
- to purchase adequate insurance;
- to enter into contracts for services;
- to create and supervise committees;
- and to conduct annual meetings and board meetings.

Fiduciary Duty

The board always has a fiduciary duty to the owners. **Fiduciary duty** is an umbrella term and includes a duty of loyalty and a duty of ordinary care. While these obligations have historically applied to corporate boards, today even unincorporated associations are usually held to the same standard.

The board's **duty of loyalty** prohibits board members from using their position to take unfair advantage of the association. Board members owe a duty of undivided loyalty to the association. They may not make decisions for the association that benefit their own interests at the expense of the association and its members. For example, the board breaches the duty of loyalty if they sign a contract with a company in which a board member has a material financial interest and the contract price is unfair to the association.

Florida statutes do not prohibit a transaction between the corporation and a board member who has a material financial interest in the transaction if:

1. The transaction is approved by the remaining board members after disclosure of the interest.
2. The affected board member does not vote.
3. The transaction is in the best interest of the association.

If the governing documents or Florida law prohibits the transaction, the transaction may be invalid and board members may be personally liable. Therefore, the board should be certain it has complied with the law and its own association documents before entering into any transaction that directly affects the financial interest of a board member.

Even though the governing documents and Florida law permit the board to enter into a transaction in which a board member has a direct financial interest, it is usually unwise for the board to do so. The transaction gives the appearance of impropriety. As a result, the board may lose credibility with the residents.

In addition to the board members' obligation to avoid conflicts of interest, they have a **duty to exercise ordinary care** in fulfilling their responsibilities. In other words, board members must perform their duties in good faith, in a manner they reasonably believe to be in the best interests of the condominium association, and with such care as an ordinarily prudent person in a similar position under similar circumstances would use.

If board members act in good faith and have a rational basis for their decision, a court will probably not interfere with the decision. Board members are not guarantors of the success of the association and generally are not liable for mistakes in business judgment. This principle is referred to as the **business judgment rule**, and applies whether or not the association is incorporated.

A problem arises when a director has to miss a series of meetings and is unwilling or unable to pay attention to association affairs. If a director is unable to attend to the association's business for whatever reason, he or she is not fulfilling the duty of ordinary care and is not fulfilling the obligations imposed by law. Under these conditions, the board member should resign.

The key is for a board member to act in the best interests of the association and to act reasonably. Acting reasonably means paying attention to association business and seeking expert advice when the board members do not have sufficient information or knowledge.

Role of the Officers

The governing documents—particularly the bylaws and Florida law—have provisions relating to the officers. These provisions may identify the number of officers the board must have and describe the rights and obligations of each. Either or both may give the board the authority to create or designate additional offices. The documents and Florida law also may set forth the procedures by which officers are elected, their terms of office, their qualifications, and procedures for their removal. A board generally has at least four officers: **president**, **vice-president**, **secretary**, and **treasurer**.

The **president** is the chief executive officer of the association and represents the board before the membership. He or she generally sets meeting agendas and presides at all meetings of the board and membership. The president usually has the power to execute legal documents on behalf of the association. Finally, the president may have the right to either select or nominate committee chairs.

The **vice-president** performs all the duties of the president in his or her absence and typically shares some of the burden of the president. The vice-president is usually assigned as a liaison to specific staff, contractors, or committees.

The **secretary** has responsibility for ensuring that board and membership meeting agendas are prepared and distributed and that the minutes and materials referred to in those minutes are prepared. He or she also maintains, or makes sure the manager maintains, the Book of Resolutions and all official records, including official correspondence, contracts, and the membership roster. The secretary or association manager can perform the above tasks. The secretary also receives, verifies, and maintains all proxies and attests by signature to the legitimacy of certain documents.

Making Decisions and Understanding the Business Judgment Rule

When self-managing the community, the board must use care in making decisions. In fact, they're obligated by law to do so. They'll be judged by a standard known as the business judgment rule to determine if they carried out or breached their duty to the association in making a decision.

Did the board...

- act within the bounds of their authority?
- act in good faith?
- believe that they were acting in the best interest of the association?
- consult with experts in the relevant field?
- get enough information?
- base their decision on what was best for the owners as a whole?

The business judgment rule won't apply to all situations. For instance, if the board intentionally misinterprets the governing documents, the rule won't apply. The business judgment rule only considers whether the board met their duty of care to the owners as a whole in making their decision.

The **treasurer** works with appropriate staff, contractors, and committees to ensure that the annual operating budget is developed and submitted for board or membership approval (whichever is required), and that the records of all association financial transactions and roster of delinquent accounts is maintained. The treasurer recommends action regarding collections, receives and disburses funds as authorized, ensures the preparation of periodic financial reports, and may authorize an independent audit. If the association has a manager, he or she is likely to prepare the documents, but the treasurer is ultimately responsible for them.

Role of Committees

The governing documents—particularly the bylaws—may identify certain standing committees or authorize the board to appoint committees. Committees serve three purposes. First, they assist the board in meeting its responsibilities by gathering information and making recommendations. Second, they broaden the community’s input on decisions by serving as a means of gathering residents’ opinions and attitudes. Finally, they serve as a good source and good training ground for future board members.

The number of committees that an association needs depends on the size of the community (larger ones usually require more) and the complexity of association activities. For example, if the board is responsible for operating recreational facilities--such as a restaurant or a marina--it is likely to need substantial assistance in governing the association.

Examples of Possible Committees:

1. A **Maintenance Committee** advises and assists the board in maintaining and enhancing the physical environment of all common elements. It also assists in identifying safety hazards and developing programs to promote the safety and security of the community.
2. An **Elections Committee** has responsibility for encouraging people to run for the board and assisting the board in monitoring elections. Under Florida law, condominiums and cooperatives *cannot* have a nominating committee. Members who wish to serve submit their names ahead of time, and are placed on a ballot. Associations are permitted, however, to have a Search Committee, to encourage individual members to run. An association may “opt out” of the statutory election procedures after passing an amendment to the Bylaws and the amendment is recorded in the county of record.—Section 718.112(2)(d)8 of the Florida statutes.
3. An **Architectural Committee** recommends architectural standards for board adoption; establishes procedures for submission, review, and approval of architectural plans; and enforces architectural standards.
4. A **Budget and Finance Committee** establishes procedures for receiving input into the budgeting process, conducts research and analysis in preparation and support for the proposed budget, and submits formal budget proposals for board consideration. It also monitors association finances.

5. A **Rules Enforcement Committee** recommends rules and penalties for board adoption and establishes procedures for identification, notification, and amicable settlement of possible violations of the rules and restrictions in the governing documents.
6. A **Newsletter Committee** recommends standards and policies for board adoption; establishes procedures for generation, review, and approval of the newsletter copy; and establishes mechanisms for production and distribution of the newsletter.
7. A **Social and Recreational Committee** fosters a sense of community. It establishes a process for identifying the needs and desires of the community, develops programs to meet those needs, and monitors and oversees social programs.
8. A **Risk Management Committee** reviews the common elements to identify ways in which the association can reduce its potential risks of loss, monitors association insurance policies, maintains a history of claims, and recommends ways in which the community can reduce its potential risk of loss.

Occasionally, the board may wish to create *ad hoc committees* to address particular issues. For example, it may wish to create a committee to investigate the feasibility of building a swimming pool.

Committees should be created by a resolution of the board. The resolution should set forth the committee's authority and scope of responsibility, its membership, the term of office, and the relationship of the committee to the board and other committees. In addition, the board should set a time limit in which the work of the committee should be completed, and specify whether the committee has a budget or authority to spend money.

To encourage successful committees, the board must give each committee meaningful tasks and adequate authority to complete them. In addition, the board should seriously consider the committees' recommendations and give the committee members public recognition for their performance. Finally, the board should publish an annual list of the association's committees, their job descriptions, and the work they have accomplished in the preceding year.

Although the board has the authority to create committees, in most circumstances, the board is ultimately responsible for the committees' actions or lack of action. The board cannot relieve itself of liability by assigning a problem to a committee. Thus, committees generally serve in an advisory capacity at the pleasure of the board. If a committee has independent authority under the governing documents, then that committee needs to have an established appeals process to permit access to the board.

Conclusion

Condominium associations function most efficiently when each of the various parties who create, live in, and operate condominium associations know their roles and perform them. Ideally, developers know it is essential to inform purchasers about living in a condominium association and are willing to train future leaders.

Owners should be familiar with the contents of the governing documents and willing to participate in association governance. Board members should understand the duty they owe to the owners and take their responsibilities seriously. Finally, committee

members should understand that they must perform their assigned tasks or the association will not function smoothly.

The world is not always ideal, however. Therefore, if the parties do not understand or perform their roles, association leaders must educate them. In this manner, the leaders will preserve property values and maintain a high standard of living.

Additional Resources

The Art of Successful Meetings. W.D. Southworth, McGraw-Hill, 2000.

The A-B-C's of Parliamentary Procedure. Channing L. Bete Co., Inc., 1998.

Basic Parliamentary Procedure Workbook, 5th Ed. Stephens., Frederick Publishers, 1994.

Conducting Meetings: A Guide to Running Productive Community Association Board Meetings. M.J. Keatts, Ed., Community Associations Institute, 1998.

Guide for the Presiding Officer: A Functional Guide for Presidents and Chairmen, 2nd Ed., Joyce L. Stephens, Frederick Publishers, 1996.

Guide to Annual Meetings, Special Meetings & Elections, 3rd Ed., (GAP 21). Nagle, P. Michael, Community Associations Institute, 1999.

The Role of the Association Secretary (GAP 18). Anita Hagerty Shenk, PCAM & P. Michael Nagle, Esq., Community Associations Institute, 1999.

The Role of the Association Treasurer (GAP 22). Howard A. Goldklang, CPA, MBA, Community Associations Institute, 1998.

The Role of the Association President (GAP 23). Robert T. Dennistoun, Community Associations Institute, 1999.

Notes