

THE HOA INFORMATION AND RESOURCE CENTER





Disclaimer

- ➔ **Note:** The Information provided during this presentation is for educational purposes only and is not meant to provide or to be construed as legal advice. Any legal questions should be directed to your attorney.

WHAT IS DORA?



COLORADO

Department of
Regulatory Agencies

Division of Real Estate

- ***“DORA is dedicated to preserving the integrity of the marketplace and is committed to promoting a fair and competitive business environment in Colorado. Consumer Protection is our mission.”***

BOARD MEMBER DUE DILIGENCE

DUE DILIGENCE

- **Due diligence (also known as due care) is the effort made by an ordinarily prudent or reasonable party to avoid harm to another party or himself. Failure to make this effort is considered negligence.**
- **The research and analysis of a company or organization done in preparation for a business transaction.**

DUE DILIGENCE

- ➔ **Generally, due diligence refers to the care a reasonable person should take before entering into an agreement or a transaction with another party. Due diligence is essentially a way of preventing unnecessary harm to either party involved in a transaction.**

DUE DILIGENCE

➤ BLACK'S LAW DICTIONARY:

“Such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case.”

More liability is being placed upon Board members, which in turn, means that Board members need to be more responsible, and need to seek out more information.



Board Fiduciary Duty

- **DUTY OF CARE**
- **DUTY OF LOYALTY**
- **DUTY OF CONFIDENTIALITY**

DUTY OF CARE

- ➔ **Duty of Care is a legal obligation imposed on an individual requiring that they exercise a reasonable standard of care while performing any acts that one could anticipate may harm others.**

DUTY OF LOYALTY

- ▶ **Duty of Loyalty is a term used in corporate law to describe a fiduciary's loyalty to a corporation.....in this case, the Board Members' loyalty to the Association and its Owners.**

DUTY OF CONFIDENTIALITY

- ➔ **Duty of Confidentiality** are the restrictions on the accessibility and dissemination of information by the Board Members in the scope of their duties.

BOARD CONFLICTS OF INTEREST

- **Have a Conflict of Interest Committee.**
- **Establish written procedures to deal with Conflict issues.**
- **Create an atmosphere for open discussion of Conflict situations.**

WORKING WITH MANAGEMENT

- Board and Management must have a good degree of Trust.
- Must have open and frequent communication.
- Have the Board meet often enough to get to know each other, as well as management.
- Work together on committees.
- The Board must consider Management's position and Management must take into consideration the Board's view.

WORKING WITH MANAGEMENT

- **Create a Board of Directors with persons who have expertise from diverse backgrounds.**
- **Create outside or advisory Directors who can provide a perspective on a situation that is independent from management.**
- **Create policies of Company and Board governance and how to improve their oversight capabilities.**

DUE DILIGENCE IN PRACTICE

- Have written procedures in place.
- Use of checklists for certain issues.
- Take time to fully discuss the issues.
- Obtain the cooperative effort of both the Board Members and Management.
- Exercise Patience and thoroughness.
- Obtain expert assistance.....attorneys, accountants, appraisers, investigators, insurance agents, etc.
- Use before there ever is a problem, and not as a reaction to something gone wrong !

Top Complaints for 2013

- **Communication with owners.**
- **Not following governing documents.**
- **Improper/Selective enforcement of covenants.**
- **Accounting (assessments/fines/interest/improper budgeting).**
- **Not performing maintenance.**
- **Failure to produce records.**
- **Meeting issues**
- **Election and voting issues**
- **Harassment/Retaliation**
- **Conflicts of Interest**

DISPUTES

- ➔ Part of HOA living.
- ➔ Communication is “key”.
- ➔ Follow dispute resolution policies – or put them in place if there are none. ADR: (Mediation/Arbitration)
- ➔ Listen to the arguments.
- ➔ Work for a fair resolution.
- ➔ Learn from the process.

How can boards and managers stay out of trouble?

- Be transparent.
- Provide easy access to records.
- Provide meeting notice.
- Ensure that the rules are followed.
- Ensure homeowners know your role and limitations.
- Be visible.
- Provide exceptional customer service.
- Promote responsible governance.

Transparency

- **Establish a transparency policy.**
- **Have open records and accessibility to information.**
- **HB12-1237 – HOA Records Bill.**
- **Hold owner forums.**
- **Provide owners the opportunity to speak at meetings.**
- **Hold open board meetings.**
- **Do not make decisions behind closed doors and through emails.**
- **Provide notices to owners through website, newsletters and emails.**
- **Take and provide good and accurate minutes.**

BOARD MEETINGS

- Provide notice and an agenda.
- Create a homeowner forum.
- Encourage discussion on items being voted upon.
- Utilize good motion practice.
- Know the rules and laws regarding executive sessions.
- Be aware of conflicts of interest.
- Be mindful of conducting business outside of meetings.
- Take good minutes.

Elections

- **Proper Notice**
- **Ballots – secret?**
- **Voting**
- **Proxies**
- **Term limits**
- **Monitoring**
- **Reporting Results**

Discussion Topics for HOA Boards:

- **CCIOA**
- **Colorado Non-Profit Act**
- **State and Federal Fair Housing laws**
- **Governing documents**
- **Policies**
- **Conflicts of Interest**
- **ADR (mediation and arbitration)**
- **Transparency**
- **Meetings**
- **Elections**

WHAT BOARD MEMBERS WANT

- Information, Information, Information.....
- Accessibility to management.
- Cooperation (this is not us vs. them !).
- Time, Time, Time..... to discuss issues.
- Enough time to get educated on the issues.
- Enough time to consider the possible ramifications.
- Consideration of the Board's point of view.

TYPICAL SITUATIONS

- **Important Contracts.**
- **Maintenance-Refurbishments-Construction Defects.**
- **Short & Long-Range Planning.**
- **Finance/Budget and Accounting.**
- **Reserves and Studies.**
- **Vendors.**
- **Legal Issues.**
- **Employment Issues and Concerns.**

BOARD DUE DILIGENCE

- Does not mean “rocking the boat”.
- Does not mean that management is not being trusted.
- Does not mean that management’s decisions are being questioned.
- Does not mean that the Board wants to manage.
- IT DOES mean that the Board is interested in doing what is best for the owners that it represents, together with management.

HOA Information and Resource Center

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THANK YOU

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