



Hawaiiana's Meet & Greet 2012

*Welcome to the Board—Now what
do I do?*

*Meetings, Decision-Making &
Fiduciary Duty*

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Why Directors Say They Serve

- Protect their investment
- Had a Bad Experience with a Director
- Want to Keep Assessments in Check
- Want to Promote a Particular Project
- Social Benefits
- Idealism
- Guilt

Why Directors Say They Serve

- Self-Interest
 - Not Necessarily Bad
 - Board Members Must be Owners

CAI

- Community Associations Institute
 - National Organization of People Involved in Associations
 - State Chapters, including Hawaii
- Poll on Satisfaction with Associations
 - First Poll in 2005 by Gallup
 - Others in 2007 & 2009
 - Latest this year

Satisfaction with Associations

- 70% of residents say they're satisfied with their association
 - 8% dissatisfied
 - 22% neutral or no opinion
- 88% believe their board members strive to serve the best interests of the community
 - 10% say the opposite
 - 2% aren't sure

Satisfaction with Associations

- 76% believe their association rules protect and enhance property values
 - 3% say they harm property values
 - 21% see no difference or aren't sure
- 81% say they get a good or great return for their assessments
 - 18% said the return is not so good or bad
 - 1% don't know

Best Aspects of CA Living

- 24% Neighborhood attractiveness
- 17% Less maintenance for owners
- 13% Community safety
- 12% Property values
- 8% Responsible neighbors

Worst Aspects of CA Living

- 34% Nothing bad about the association
- 15% Restrictions on exterior improvements
- 10% Dealing with neighbors
- 9% Paying assessments
- 8% Dissatisfaction with association board
- 7% Restrictions on parking

Election is Just the Beginning

- Decision-Making Process
- Liability of Directors

Know Your Authority to Act

- If you don't, you might do something you're not allowed to do
- Or you might have the right to do something but you have to do something first
 - Get a vote of the Owners
 - Send a Notice to the Owners
 - Pass a Resolution

Know Your Authority to Act

- Board Members have almost no authority
- The Board of Directors has almost all of the authority
- Some limited exceptions
 - Officers
 - Notice of Meetings
 - Right of Owners
 - Access to documents

Boards Have Authority

- You have to call a meeting
 - Proper Notice
 - Notice to Directors per Bylaws
 - Post Notice to Owners
 - Quorum
- At the meeting, you have one vote
- Discussion
 - Board Members
 - Owners subject to majority vote by the Board or Executive Session

Board Action w/o a Meeting

- Unanimous Written Consent
- Ratification?
- Phone Poll?
- Email?

Authority of Boards

- Governing Documents
- Statutes
 - Condominium Statutes (HRS Chapters 514A & 514B)
 - Planned Community Act (HRS Chapter 421J)
 - Nonprofit Corporation Act (HRS Chapter 414D)
- Governmental Regulations
- Case Law

Authority of Boards

- Basic Condominium Documents
 - Declaration
 - Master Deed
 - Condominium Map
 - Bylaws
- Basic Planned Community Documents
 - Declaration of Covenants Conditions & Restrictions
 - Bylaws

Authority of Boards

- Corporate Model of Governance
- Broad Powers
 - Usually all powers not reserved to the owners
 - Subject to State and Federal Statutes
 - Lots of Exceptions
- Operate the Project
- Establish Policies

Board Duty

- Fiduciary Duty
 - Duty imposed by law when you hold property of another
 - Very high duty
- 4 Main Board Duties plus 1 Appendage

Duty of Diligence

- Directors should act as a reasonably prudent person under similar circumstances.
 - Be informed
 - Research complex issues when appropriate
 - Ask experts if you don't know the answer
 - Monitor what is going on
 - Implement controls and checks and balances to keep yourselves informed about association business.

Duty of Good Faith

- Act with honesty and fair dealing
- Act in the best interests of the association
- Act without an ulterior motive

Duty of Loyalty

- Directors should not use their position for their own interests
- The association's interests should come first
- Try to avoid even the appearance of conflict of interest

Conflicts of Interest

- Association's interest conflicts with Director's or Third-Party's interest
- Not always Evil
- Has to involve a specific issue
- Usually financial interest, but can be personal
- Must disclose
- Must refrain from voting

Duty of Obedience

- Know and follow the law
- Know and follow association documents
- Do not exceed your authority
- If you're not sure, ask

Business Judgment Rule

- Owner challenging a non-self dealing transaction [i.e., one in which no conflict of interest exists] must prove:
 - Director failed to act in good faith, or
 - Director failed to act in a manner he reasonably believed to be in the best interests of the association or
 - Director failed to exercise the care which an ordinarily careful person in a similar position would use in a similar circumstances
- Presumption that the action is proper
- If your actions are within your authority, the courts will not normally second guess you

Business Judgment Rule

- Normally, you can only be liable for gross negligence
 - If incorporated as a Nonprofit Corporation
 - You do not receive compensation or expect compensation

Sources for Information

- CAI
 - www.caionline.org
 - www.caihawaii.org
- Hawaii Real Estate Commission
 - hawaii.gov/dcca/real/publications
- Hawaiiana Management
 - www.hmcmgt.com
- Ekimoto & Morris
 - www.hawaiicondolaw.com