

BOARD OF DIRECTORS AS FIDUCIARIES

by Robert M. Nordlund, PE, RS
CEO/Founder
Association Reserves, Inc.

www.reservestudy.com

In a corporation, the board of directors, as a body, has a fiduciary responsibility for the decisions they make with regard to corporate assets and the rights of stockholders. The fiduciary responsibilities of a corporation's board members includes:

- Avoiding conflicts of interest
- Acting in the interest of the company rather than the member's personal interest
- Providing oversight to assure that all company business is transacted legally
- Making decisions to protect the assets of the corporation

What duties must board members of nonprofit corporations uphold?

Duty of Care. Community association boards must give the business of their associations the same degree of care and diligence that prudent persons would exercise in their own affairs in similar circumstances. The duty of care requires directors to invest time and attention in association business, make reasonable inquiry into association matters to enable informed decision-making, and take reasonable, not arbitrary or capricious, actions.

Duty of Loyalty. Directors of community associations, like their counterparts in for-profit corporations, have a duty to the association and to its members to act for the association's benefit only and with an eye to its best interests, without regard for any personal interest the directors may have. Courts take this duty very seriously, using expressions such as "utmost good faith." If a transaction is challenged, courts place the burden on the director to demonstrate the fairness of any transaction in which the director is personally involved.

Duty to Act within the Scope of Authority. Directors owe a duty to their associations and to their members to perform their duties in accordance with the authority granted to them by statute and in their governing documents. If directors exceed this authority and damage results, the directors may be personally liable for their unauthorized actions.