Consideration by the CICCH Commission (NAC 116.405)

Did the board:

1. Act outside the scope of authority granted in the governing documents?

2. Act for reasons of self-interest, gain, prejudice or revenge?

3. Commit an act or omission which amounts to incompetence or gross negligence?

4. Disclose confidential information?

5. Keep informed of developments relating to common-interest communities?

6. Cooperate with the Division in resolving any complaints filed?

7. Uniformly enforce the governing documents of the association?

8. Comply with all applicable federal, state and local laws and regulations and the governing documents of the association?

9. Hold meetings with such frequency as to properly and efficiently address the affairs of the association?

10. Obtain, when practicable, at least three bids from reputable service providers who possess the proper licensing?

11. Consult with appropriate professionals before making any major decision?

12. Maintain current, accurate and properly documented financial records?

13. Adopt and fairly enforce the collection policies of the association?

14. Deposit all funds of the association for investment in government securities that are backed by the full faith and credit of the United States?

15. Abide by their fiduciary duty to the community?

State of Nevada

OFFICE OF THE OMBUDSMAN
Nevada Real Estate Division

Department of Business and Industry
Real Estate Division

Ombudsman for Owners in Common-Interest Communities and Condominium Hotels

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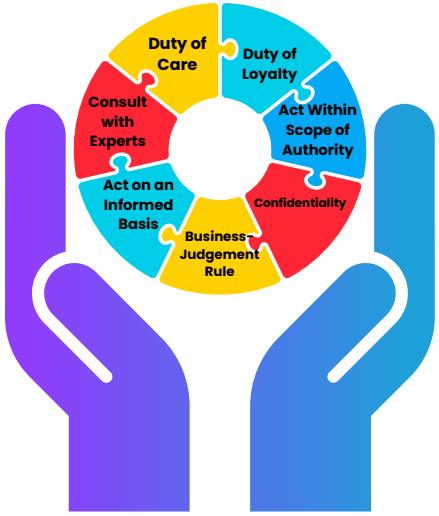
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Fiduciary Duty



The primary duty of a board director is to make decisions on behalf of the association. In the performance of this duty, board members and officers serve as fiduciaries.

What Is a Fiduciary?

A fiduciary is a person or organization that acts on behalf of another person or persons, putting those interests ahead of their own.

In associations, it applies to the executive board of directors, officers and community managers as they act in their official capacities.

Being a fiduciary requires a certain code of conduct. Directors must be open, honest and diligent in their duties, stay informed of issues affecting their associations, and reach decisions using sound business judgment. Doing so protects not only the association, but also the director, who could be held accountable for failing to adhere to this standard.

What Are the Requirements of a Fiduciary?

In Nevada, the requirements of a fiduciary are specified in **NRS 116.3103**:

"In the performance of their duties, officers and members of the executive board are fiduciaries and shall act on an informed basis, in good faith and in the honest belief that their actions are in the best interest of the association. They are required to exercise the ordinary and reasonable care of officers and directors of a nonprofit corporation organized under the law of this State; subject to the business-judgment rule and conflict of interest rules."

It is essential that board directors understand each component of this duty:

Business-judgment rule – The standard for a board's decision making is to apply the "reasonable person" test. Would a reasonable and prudent person make a similar decision under similar circumstances? Directors are presumed to be exercising sound business judgment if their actions can be defended as being in the best interest of the association. Generally, directors have broad discretion to make decisions as long as they can meet this standard.

Act on an informed basis – For any association issue, the board must first inquire about the facts of the matter and educate themselves accordingly. Directors should have a general understanding of the scope of their authority and options available to them.

Use of experts – When decisions involve matters beyond the directors' expertise, they will rely on specialized experts, such as attorneys, accountants, reserve study specialists, insurance agents, contractors, arborists, or anyone whose specialized knowledge is essential to making an informed decision.

Duty of care – In exercising "ordinary and reasonable care," boards must identify risks and avoid actions that may lead to loss or harm to the association. Even a lack of action, such as deferred maintenance or a failure to establish internal financial controls, may compromise the association's assets and should be avoided.

Duty of loyalty – Directors must avoid self - dealing, conflicts of interest, or even the appearance of a conflict of interest. This includes disclosing any personal interests that may appear to influence a decision before that decision is made. Directors may never directly contract for services, goods or financing with the association, they must abstain from voting on any matter in which they stand to gain, and cannot serve on the board if they stand to gain any personal profit or compensation of any kind from the association.

Act within scope of authority – Associations exist for a specific purpose, often stated explicitly in the declaration of covenants, conditions and restrictions (CC&Rs). Board members are elected to act on behalf of the association and execute provisions of the association's governing documents while remaining within the scope of authority afforded to them.

Duty of confidentiality – Directors have access to association records that are considered privileged, meaning the information is available only to certain individuals, for certain purposes. This includes any information relating to a specific unit's owner. Discussions with attorneys over legal strategy may also be confidential. Those who have access to privileged information have a duty to ensure it remains confidential. They are also obliged not to use the information for personal ends, and even when a director leaves the board or community, they may not breach this duty.

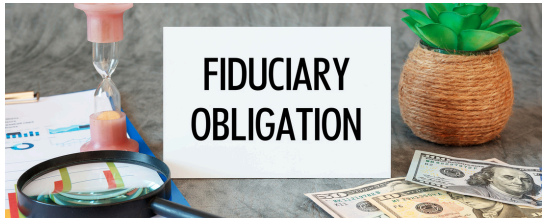


What Other Expectations Are There?

Directors serve as volunteers and may not receive compensation of any kind. At most, they may be reimbursed for expenses they personally incur as a result of performing their duties, but there must be internal accounting controls in place to ensure authorization, proper tracking and documentation of such transactions.

Directors also have a duty to educate themselves generally on their rights and responsibilities. The Ombudsman's Office provides numerous classes and publications to allow boards to comply with this requirement.

Directors must familiarize themselves with the association's governing documents as well as NRS 116 and its regulations.



Requirement to Document Actions and Keep Appropriate Records

Documenting decision making is almost as important as the decision itself. Association records justify association actions and are essential for community consistency and transparency over time. Meeting minutes are essential to this process, reflecting how directors voted and the substance of their remarks.

Aside from meeting minutes, which must be maintained until the community is terminated, the books, records and other papers of the association must be maintained for at least 10 years. Records include, but are not limited to, financial statements, architectural approvals and/or denials, contracts to which the association is a party, etc.