

Advice to Self Managed Associations

ECHO Expo 2005

Presented by:

John Gill, Esq.

Hughes & Gill

Rolf Crocker, AMS,
CCAM

Community Association Banc



Association Primer

- ◆ Most HOAs in California are non-profit, mutual benefit corporations
- ◆ Corporations function through an elected Board of Directors
- ◆ The Primary mission of the Board is to protect, maintain and enhance property values for the benefit of all members

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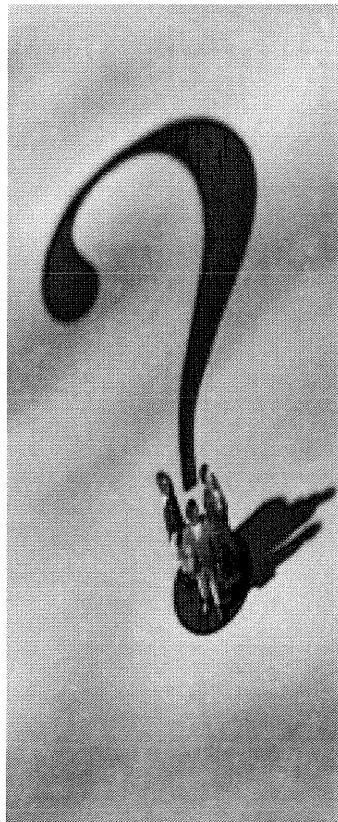


Association Primer (Cont'd)

- ◆ The Board of Directors must comply at all times with its fiduciary duty to the corporation
- ◆ This is done by complying with the Business Judgment Rule (Corporations Code Section 7231)

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Fiduciary Duty and the Business Judgment Rule



What is fiduciary duty?

- ◆ to act in a position of trust, good faith, candor and responsibility, on behalf of another.

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CCC 7231 on Fiduciary Duty

- ◆ Directors must act in the best interest of the homeowners association as a whole.
- ◆ A director must act as an ‘ordinarily prudent person’ would act under similar circumstances.
- ◆ A director must act only after reasonable inquiry.

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Safe Harbor under 7231

- ◆ A person who performs the duties of a director in accordance with subdivisions (a) and (b) shall have no liability based upon any alleged failure to discharge the person's obligations as a director.

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Board Member Duties & Responsibilities

- ◆ Protect, Maintain and Enhance Property Values
- ◆ Enforce the Association's governing documents
- ◆ Authorize and Obtain Reserve Studies
- ◆ Levy and Collect Assessments
- ◆ Maintain Common Area and Separate Interests as required by governing documents
- ◆ Prepare and Distribute Budgets
- ◆ Quarterly financial review
- ◆ Make Disclosures to Members
- ◆ Maintain corporate records
- ◆ Obtain appropriate insurance coverage

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Enforcement of Governing Docs

- ◆ Must continually work to ensure that governing documents are consistent with the law
- ◆ Adoption of Rules must follow new legal requirements (Civil Code section 1357.130)
- ◆ Must ensure fair and uniform application to all members
- ◆ Must give members due process before imposing discipline
- ◆ Must offer members opportunity for fair dispute resolution procedures

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Reserve Studies

- ◆ Must make a study of reserve requirements once every three years (Civil Code section 1365.5(e))
- ◆ Must review the study annually and make adjustments as necessary
- ◆ Important to identify ALL components which the Association is obligated to maintain, repair and replace
- ◆ Comprehensive review of condition of development before ten years of age

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Assessments

- ◆ Obligated to levy regular and special assessments sufficient to perform Association's obligations under the governing documents and law
- ◆ No requirement of full funding of reserves, but must disclose financial condition to members
- ◆ Limitation on assessment increases without member approval
 - Regular assessment: 20% on prior year's assessment level
 - Special assessment: 5% of Association's budgeted gross expenses for that fiscal year
 - Emergency assessment: requires extraordinary circumstances
- ◆ Board must adopt and distribute delinquent assessment policy
- ◆ Association must comply with federal Fair Debt Collection Practices Act

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Maintenance

- ◆ Board should authorize and oversee annual maintenance and repairs as recommended in the Annual Budget and Reserve Study
- ◆ Respond promptly and professionally to member concerns or reports of failing or defective components that the Association must address
- ◆ Board should seek out and rely on the advice of experts concerning maintenance and repair recommendations
- ◆ Authorize comprehensive investigation of condition of development before ten years of age (SB 800)

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Budgets & Annual Financial Statement

- ◆ The budget must be distributed not less than 30 days nor more than 90 days prior to the beginning of the association's fiscal year. CCC §1365(a)4
- ◆ (T)he association must prepare and distribute a review of the financial statement of the association in accordance with generally accepted accounting principles (GAAP) by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income to the association exceeds \$75,000. A copy of the review of the financial statement shall be distributed within 120 days after the close of each fiscal year. CCC §1365(b)

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Quarterly Financial Review

CCC 1365.5

Unless the governing documents impose more stringent standards, the board of directors must at a minimum review the financial records of the association as follows:

- ◆ Current reconciliation of the operating accounts - Quarterly
- ◆ Current reconciliation of the reserve accounts - Quarterly
- ◆ Current year's actual reserve revenues and expenses compared to the current year's budget, on a quarterly basis.
- ◆ The latest bank statements for operating and reserve accounts.
- ◆ An income and expense statement for the association's operating and reserve accounts on at least a quarterly basis.

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Insurance

As a Non-Profit Mutual Benefit Corporation, the Association must maintain appropriate levels of insurance as required by Law and Governing Docs

- ◆ Property
- ◆ Liability
- ◆ Fidelity
- ◆ D & O - C.C. Section 1365.7: No liability for members of the Board of Directors for personal injury/property damage if D &O coverage is at least \$1,000,000

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Disclosures to Members

ECHO, as well as several law firms have a checklist for Annual Disclosures such as:

- ◆ Budget & Reserve Summary
- ◆ Assessment Collections Policy
- ◆ Fine Schedule
- ◆ Insurance Summary
- ◆ And Many, Many more!!

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Records Maintenance and Retention

- ◆ Minutes & Resolutions
- ◆ Unit Owner Files
- ◆ Contracts and Certificates of Insurance
- ◆ Major Component repair history
- ◆ Financial Records

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Governance

- ◆ Conduct of Board of Directors and Annual Meetings
- ◆ Conduct of corporate business generally
- ◆ Styles of Governance
- ◆ Homeowner's Open Forum
- ◆ Servant Leadership - "It's not about me"

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Putting Your Team Together

- ◆ Reserve Study preparer
- ◆ Assessment Collection service
- ◆ Contractors, maintenance companies and forensic experts
- ◆ Bookkeeping and CPA
- ◆ Banker
- ◆ Insurance agent/broker
- ◆ Custodian of Records
- ◆ Attorney

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Wrap Up

- ◆ Stay educated!!
- ◆ Be fair and consistent
- ◆ Use Common Sense and Due Diligence
- ◆ Rely on Experts
- ◆ Get the help you need
- ◆ Keep a smile on your face and a song in your heart! 😊
- ◆ Thank you for your Time

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RESERVE STUDY PRINCIPLES

(ARE YOU UNDERFUNDED?)

By
Thomas Douma
Of
SBI, LLC

5/22/2005

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