LEGAL

Fiduciary Duty Explained

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What is a fiduciary duty? The Condominium Act explicitly states that officers and directors of the association have a fiduciary relationship with the unit owners. The statute provides that directors and officers must act in good faith, with the care an ordinary prudent person would exercise in a similar position, and in a manner reasonably believed to be in the association's best interests, incorporating the applicable state law.

The Condominium Act also sets out specific operational requirements with respect to this fiduciary relationship. These include: (1) prohibitions on self-dealing and kickbacks, with criminal penalties and mandatory removal for violations; (2) strict conflict-of-interest procedures, including disclosure, recusal, and member cancellation rights for conflicted transactions; (3) requirements for board voting and meeting minutes; (4) mandates for financial controls, such as fidelity bonding for those handling association funds, prohibitions on commingling funds, and restrictions on the use of association debit cards; (5) duties to confirm that community association managers are properly licensed before contracting; (6) obligations to maintain and provide access to association records, with criminal penalties for willful violations.

Chapter 617, Florida Statutes, the Not-For-Profit Corporation Act, also has provisions applicable to this discussion. For example, in discharging one's fiduciary duty, a director and officer is permitted to rely on information from competent officers, professionals, or board committees, unless they have knowledge that makes such reliance unwarranted. That's why having an attorney that is Florida Bar certified in condominium law is recommended. The laws have become so complex that at Becker the large team of condominium lawyers, as a group, take a long study weekend each year to analyze the new laws, discuss their meaning and interpretation and bring back a renewed understanding and perspective to our clients.

Florida law provides qualified immunity for association officers and directors, shielding them from personal monetary liability for management decisions unless their breach of duty involves criminal conduct, improper personal benefit, recklessness, or bad faith. The corporate statutes define "recklessness" as the conscious disregard of a known or obvious risk likely to cause harm.

If you are in doubt about an action to be taken as a Board member, consult with professionals whom you believe are knowledgeable about the issue in question before taking the action. It is important to recognize that bookkeepers, CPA's and managers are not attorneys. We assist associations out of problem situations all the time, when Board members acted because someone (not a lawyer) told them that it was okay to do something a certain way. Also, never act upon "legal" advice provided by a lawyer who is not licensed in the State of Florida. If you want to be afforded the protection of Chapter 617, which states that "a director is not liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this section" [of Chapter 617], then obtain guidance from individuals who are knowledgeable in in their area of expertise.

Mr. Friedman is recognized by the Florida Bar as a specialist in Condominium and Planned Development Law. This article is intended for educational purposes only and is not intended as legal advice. If you have a legal issue, please consult your association attorney. Mr. Friedman may be contacted at MFriedman@BeckerLawyers.com