

## **Duties of Volunteer Directors - What Do They Want From Us?**

But we are all just volunteers! We all have regular jobs to do too! They can't expect us to do everything!

We are surprised by the number of times that we've heard these statements from board members when they are being challenged for actions they've taken, or decisions they've made. However, Colorado law does not make any explicit distinction between board members who are volunteers as compared to board members who receive compensation for serving on the board (such as for other types of non-profit corporations).

Generally, courts in Colorado state that the association's board has a fiduciary duty to the association and its members. A fiduciary duty means the board has a duty to act in the best interests of the association, with utmost loyalty, in good faith, and with reasonable skill. The **Colorado Revised Nonprofit Corporation Act ("Nonprofit Act")** has codified this duty as follows:

Each director shall discharge the director's duties as a director, including the director's duties as a member of a committee of the board, and each officer with discretionary authority shall discharge the officer's duties under that authority:

- (a) In good faith;
- (b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (c) In a manner the director or officer reasonably believes to be in the best interests of the nonprofit corporation.

However, the **Colorado Common Interest Ownership Act ("CCIOA")** provides that, for associations that are subject to its provisions, if not appointed by the declarant, no member of the board and no officer is liable for actions taken or omissions made in the performance of such member's duties except for wanton and willful acts or omissions. This is a significantly lower standard than a fiduciary duty, and ought to give some measure of relief to board members of communities that were formed under, and are subject to the provisions of **CCIOA**. Unfortunately, there are no court decisions interpreting this provision, and some courts continue to speak in terms of fiduciary duties of board members even where the community is subject to **CCIOA**.

In interpreting the validity of certain actions of homeowners association boards, Colorado courts have also recognized what is commonly termed the "business judgment rule." The business judgment rule was first enunciated with respect to a homeowners association in Colorado in the case of **Rywalt v. Writer Corp.**, a 1974 Colorado Court of Appeals' decision. In that case, the court said:

The good faith acts of directors of profit or non-profit corporations which are within the powers of the corporation and within the exercise of an honest business judgment are valid. Courts will not, at the instance of stockholders or otherwise, interfere with or regulate the conduct of the directors in the reasonable and honest exercise of their judgment and duties.

In addition to the protections afforded by the business judgment rule, the **Nonprofit Act** also provides additional protection to board members who rely on advice or information provided by others if certain criteria are met. It provides:

In discharging duties, a director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

\* \* \*

(b) Legal counsel, a public accountant, or another person as to matters the director or officer reasonably believes are within such person's professional or expert competence;

\* \* \*

A director or officer is not acting in good faith if the director or officer has knowledge concerning the matter in question that makes reliance otherwise permitted.

A director or officer is not liable as such to the nonprofit corporation or its members for any action taken or omitted to be taken as a director or officer, as the case may be, if, in connection with such action or omission, the director or officer performed the duties of the position in compliance with this section.

Therefore, board members need to make sure that they are acting:

- ☐ In good faith;
- ☐ In the best interests of the association;
- ☐ In a reasonably prudent manner;
- ☐ In the exercise of honest business judgment; and
- ☐ In reliance on the opinions, advice and information of experts.

If these standards are met, then board members will continue to serve without pay and in their free time, but at least knowing that they have protected themselves to the extent they are able from liability to ungrateful homeowners.