



HOA Leadership Roles and Duties

**A Guide to the Positions of
President, Vice President,
Secretary, Treasurer,
and Board Member
in Condo and
Homeowners Associations**

*An Exclusive Special Report
from HOAleader.com*

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A Message from the President

Dear HOA Leader,

We're hearing from a growing number of association members who want more detail about their responsibilities—or who want an easy way to educate their newly elected fellow board members about what, exactly, board members do. What's the president supposed to do? How about the vice president, secretary, and treasurer?

In this exclusive special report, we provide you with insight that will guide your board and officers in their day-to-day roles. We explain each officer's duties and responsibilities, discuss where officers sometimes get confused about their roles, and provide guidance on how officers and directors can make sure they're fulfilling their duties while not stepping on others' toes.

As always, when it comes to issues of legal compliance for HOAs, it is important to remember that each state has its own rules, and you should consult with an attorney or other professional as to the appropriate steps for your specific situation.

Our goal for this report, as for all HOAleader.com information products, is to help make your association a better run organization and help make you a better leader for your community. I am confident that you will find concrete ideas you can put to work in your condo or homeowners association.

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Best regards,
Matt Humphrey
President, Plain-English Media
Publisher of HOAleader.com

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909 Marina Village Parkway #183

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The Difference between Directors and Officers

Let's start with the basics. Every board has both directors and officers, and those roles are different. "Typically, the association membership elects the board of directors, and the board elects or appoints its officers," explains [Nancy T. Polomis](#), a partner at Hellmuth & Johnson PLLC in Eden Prairie, Minn., who advises homeowners associations.

Who can serve as a director or officer? The answer is controlled by an association's governing documents. "That really depends on what the [association's bylaws](#) say," says Polomis. "Some will allow nonassociation members to be directors and/or to be officers. Some will restrict board membership to association members. Some will restrict officers to those who are members of the board of directors, which means the officers are usually also directors—for example, somebody on the board is also president—but that doesn't have to be the case. You could pull in somebody who's not on the board to be president. But most times, associations don't do that because sensitive issues are discussed. Most require at least the president and treasurer to be members of the board of directors."

Officers Play Two Roles

As a result, officers are typically serving in dual, concurrent roles. "The people who are running the show are wearing two different hats," says Polomis. "They're wearing a hat as directors and making decisions in their capacity as directors. And they're wearing a separate hat as president, secretary, or other officer. The board may develop a budget and make decisions about whose decks are going to be repaired, and then it's the president who signs off on the contract because the board has authorized the president to do that."

[Matt Zifrony](#), who advises homeowners and condo associations at Tripp Scott, a Ft. Lauderdale law firm, and who's also the president of a 3,000-home association, agrees that boards set the general direction for an association. "The board as a group meets once a month, sometimes less often and sometimes more often," he says. "They make the big-picture decisions: 'Should we enter into a new contract with [\[blank\]](#)? Should we enact new rules? Should we change our vendors?' They're meeting at a limited time period to make decisions.

"The president is more involved in the day-to-day activities of the

community. There are instances where the board is less hands-on and gives the president authority by saying, 'Look, president, you don't need to bring these issues to the board. If you see a problem, you have the authority to handle it.' I don't recommend that happen. I don't think it's in the best interest of the community, and I think it puts the president in harm's way because people can question whether the president is acting in the association's best interest. I counsel that the board makes decisions."

Directors

Directors can also often serve dual roles, explains [Duane McPherson](#), division president at RealManage, a San Rafael, Calif., association management firm that oversees properties in Arizona, California, Colorado, Florida, Louisiana, Nevada, and Texas. "Regular board members can be liaisons to committees," he says. "They can also volunteer for specific projects to help the board. Say the association has a road committee. A board member may either be on that committee or serve as chair of that committee."

Whatever a director's day-to-day role, McPherson says one critical function of a director is to support the board. "Once a decision has been made by the board, one really important role for board members is to support that decision as long as it's been made in a democratic fashion," he says. "They may have argued against the decision before it was made,

but a good board member will always support board decisions. It's the best thing they can do for the association as a whole."

Removing Officers and Directors

When it comes to removing officers and directors, there's often confusion. In most associations, members don't elect board officers, so they typically also can't remove officers, which is usually a surprise to members and even some directors.

"Most associations say an officer can be removed by the board at the board's discretion, and the director can be removed only by vote of membership of the entire association," explains Polomis. "So the board could remove somebody as an officer, but that person is still a director until the entire membership votes that person off the board."

Polomis recently ran into exactly that situation. "We had a treasurer who really strongly disagreed with a decision the board had made," she explains. "He said, 'I don't want to hold the position of treasurer anymore.' So the board removed him as treasurer. I don't think anybody realized that—while he was not treasurer anymore—he still had a vote on the board. They thought by letting him out of being treasurer, they were removing him from the board."

The President's Role

An association president's role is also dictated by an association's governing documents, but few governing documents provide a specific and exhaustive list of duties and responsibilities for each officer. So it's left up to the association to flesh out the authority of its president. "Our bylaws tend to be pretty liberal," says Polomis. "Generally, the president is the person in charge and certainly has the authority to supervise everybody."

The president's most formal role may be at meetings. "Usually, when I talk to my boards, the president is the go-to person," says Kristen L. Rosenbeck, a partner at the Mulcahy Law Firm PC in Phoenix, which represents associations. "The president runs the meetings, making sure the meeting is staying on schedule, the discussion stays on the agenda, and keeping members and the board in order and on focus."

Don't underestimate the power of running board meetings. "There are really two powers the president has," says Zifrony. "The president sets the agenda for the board meetings and runs the board meetings, and if you're following [Robert's Rules](#), the president is the only person who can make a motion. If the president knows how to use his power properly, the power to set the meetings allows him to control what's done."

Also keep in mind that your president isn't just a traffic director at meetings. "One myth a lot of people

believe is the president votes only in the event of a tie," says Polomis. "That's not true unless the documents provide for that. Otherwise, the president is a member of the board and has as much right to vote as everybody else."

Outside meetings, your president's role is typically less defined. "The president's role outside meetings should be discussed among the board," says Rosenbeck. "But typically a property manager should be contacting only one board member, and it varies from board to board, but often that person would be the president."

At associations Zifrony is involved in, the president is also a day-to-day manager. "When the decision on the board level is made about replacing the landscaper, it's typically the president who's noticed there's a problem with the vendor, who may have been meeting with the vendor to fix the problem, and who has been meeting with the property manager," he says. "So when the item is on the agenda to consider switching, the president would say, 'Let me tell you what's led up to this.' Then the board can make the decision."

At most associations, the president is also the authority who signs documents. "Typically," says Rosenbeck, "the president signs documents on behalf of the board—any amendments, signatories on bank accounts, or contracts."

Rosenbeck says that when you're

choosing your association's president, try to choose a person you believe will be a benevolent leader. "Look for someone who takes the leadership role, who won't be dominating at meetings, and who's good at drawing out everybody to hear on action items," she says. "You're looking for a very good people person who's a good delegator but also a leader who can take charge."

The HOA President and the Authority to Sign Contracts on Behalf of the Association

Board members often wonder if one person can, without the rest of the board's knowledge, bind the association to a contract. The short answer is yes—particularly if the person is the association president. The question isn't whether the person actually had the authority to bind the association. It's whether the other party (usually a vendor) reasonably believed that person had that authority. If so, the contract is binding.

"It boils down to the law of actual versus apparent authority," explains [Bob Tankel](#), principal at Robert L. Tankel PA in Dunedin, Fla., a law firm that advises associations. "Under Florida law, the president of a corporation—and in Florida all condo associations and most homeowners associations have to be incorporated—the common law of corporations is that the president has

apparent authority to sign a contract." Most states follow that common law rule, but check with an attorney in your state to know your specific law.

Tankel explains what that means in lay terms. "When Bill Gates was running Microsoft, if he'd have called me up and said, 'Bob, I want you to do some work for Microsoft,' I could have reasonably assumed he had the authority to bind his company," he says. "Third parties don't have to look any further when a president of a corporation contacts them. They have the right to rely on the apparent authority of that president and can hold the association's feet to the fire."

That doesn't mean the president is off the hook. "If the president didn't have the authority to bind the corporation," explains Tankel, "the president runs the risk of a breach of fiduciary duty action."

What if the board's point person isn't the association's president? "Third parties who rely on anyone else do so at their danger," says Tankel. "There's specific language in Florida law that says owners have no right to act on behalf of the association simply by virtue of being owners. As a matter of corporate law, it's my position that a simple director who's not the association's president has no apparent authority, and no third party has a right to rely on any representation from other directors."

To get more information about avoiding trouble with contracts, read the HOAleader.com article, [HOA Contracts: Can One Board Member Contractually Bind Your Homeowners Association?](#)

The Vice President

If your association has a vice president—and many don't—that person's job is to support the president. "Some associations don't have a vice president," says Polomis. "Some have more than one, so you might have three people who are vice presidents. They don't really have any specific duties, but just like Joe Biden, an association's vice president steps into the shoes of the president when the president is unable to act."

What does that mean, exactly? "I've seen associations have vice presidents, but it's mostly just a title unless the board gives the vice president more authority to do things," says Zifrony. "The vice president steps in if the president is unavailable. If there's a board meeting and the president isn't there, the vice president runs the meeting. If the president goes on vacation and an emergency comes up, the vice president steps in."

McPherson doesn't run into many associations that have vice presidents, partly because the role is undefined in most cases. "The vice president's role is to fill in for the president when the president is gone, and most governing documents say that," he explains. "It's like our country's vice president, who has duties, but those duties differ from administration to administration."

The Secretary

The secretary is the association's scrivener and often a signatory on documents, such as amendments to [bylaws](#) or [CC&Rs](#). "As you'd expect," says Polomis, "secretaries are responsible for recording minutes of all HOA meetings, keeping the association's books and records, and giving all the notices. A secretary can delegate responsibilities to a professional manager, but that doesn't relieve the secretary of the ultimate responsibility to do things. So if the property manager screws up and doesn't send notice of a meeting, it's technically the secretary's fault."

Rosenbeck agrees that the secretary can delegate to a manager but must oversee the manager's work. "A lot of associations are so large that the management company may provide someone to take meeting minutes," she explains. "So some of the secretary's role might be delegable, but secretaries have to oversee the person to whom they're delegating."

If your association is [self-managed](#), it's the secretary's job to be sure to understand and follow the notice requirements for each type of meeting the association conducts. "If there's no property manager, it's typically the role of the secretary to do notices, but often secretaries don't know how to do proper notices," says Zifrony. "When that happens, another board member may step up and assist, or the board may need to call the [association's attorney](#)."

McPherson agrees. "It could be the secretary that handles notice, but it doesn't have to be," he says. "It could be anyone on the board. I've seen it delegated to a variety of individuals. Sometimes, there's a committee that works through the issue of notice."

The same is true of meeting agendas. Some states require that a meeting agenda be posted or mailed four to six days prior to the meeting, says McPherson. Technically, that's the secretary's job, but in McPherson's experience, the agenda is created by the president or the board and then posted by one of the board members.

One duty of the secretary that many board members quibble over is what should be in the association's meeting minutes.

"Every association has a different idea of what should be in meeting minutes, and sometimes secretaries take down more information than should be in the minutes," says Rosenbeck. "Many associations have 10-page meeting minutes about every discussion that was held. But most associations shouldn't have more than one page of minutes that include just the business that happened, not what was discussed."

Rosenbeck suggests including in the minutes your association's name, the type of meeting that was held, who attended,

and recognition of the approval of the prior meeting's minutes. "Also include motions," she says. "This motion was on the floor, discussion was held, and this is how the board voted.' Then the minutes should reflect that the meeting was adjourned."

If the board or a committee has completed a report, the minutes should reflect that a report was presented but not include details about what's included in the report. "You might attach the report to the minutes," says Rosenbeck, "but only under very unusual circumstances."

Finally, the minutes shouldn't be distributed until they've become the official meeting minutes, says Rosenbeck, which means until the next meeting when they're approved.

HOA Meeting Minutes: When Does Added Detail Become TMI?

Do meeting minutes need to be transcription-like, recording every utterance made during association meetings? Or is that TMI—too much information?

Or is it better for minutes to be a simple summary of the major actions taken at association meetings?

Those two questions summarize a long-running debate about how detailed meeting minutes need to be. Here's your answer.

They're Not Called "Hours"

Tankel has a simple sentence he uses to explain to clients what should—and shouldn't—be included in meeting minutes. "They're called minutes because they're a record of what's done at a meeting, not what's said," he says. "Otherwise, they'd be called hours."

That's exactly right, says [David C. Swedelson](#), principal at Swedelson & Gottlieb, a law firm that represents associations in the Los Angeles area. "I see minutes all the time that say things like, 'Jim complained about dog poop in the common area,' and 'Joe thinks there should be better flowers in the yard,'" he says. "Minutes should be a record of

decisions made by the board, not everything that was discussed at a meeting. So if something isn't mentioned in the minutes, it didn't happen."

TMI Can Spell Trouble

If you're one of the people who believe more detail is better, you're probably thinking, "So there's TMI in our minutes. What's the harm?" Actually, TMI can be harmful.

"Minutes are a wonderful place to get into a lot of trouble in your corporate operations," says Tankel.

"It can come back to haunt the association if somebody mentions something dealing with maintenance or repairs," adds Swedelson. "In California, we have to allow homeowners an opportunity to address the board at every meeting. That often gets reflected in the minutes, but comments from homeowners shouldn't be included in the minutes. Inevitably, some homeowner sues claiming the association didn't maintain something, and the association claims it wasn't aware of the problem. But then there's a record in the minutes that Joe mentioned the problem."

Tankel had just such a case. "I had a client who had a building collapse claim, and the insurance company's defense was that the board knew for 10 years about the problem that led to the collapse and did nothing."

Of course, during the discovery phase of litigation, the insurer demanded that the association produce meeting minutes, where the association's knowledge of the problem was outlined in black and white. "The secretary had dutifully written everything that was said five years ago," explains Tankel. "The minutes said something like, 'Mr. Brown complained that his roof was still leaking after mentioning the problem for the past five years.' And, 'Mr. Green denied there was anything wrong and said the problem was all Mr. Brown's fault.' These sorts of stray comments in the meeting are never helpful. They're not related to the substance of the meeting."

It's that kind of real-life example that prompts both attorneys to advise their clients to keep their minutes short and sweet. "Too much information can lead to liability," says Swedelson. "And it makes it harder to sift through all the information to understand what action was taken."

So what's the bottom line on what to include in minutes? "The debate on any motion is irrelevant," says Tankel. "The minutes should state who made a motion, what the motion was, whether it was seconded, and whether it passed or failed."

The Treasurer

The treasurer is responsible for overseeing the association's financial assets, maintaining the budget and other financial records, and is often a signatory on financial accounts.

"Truthfully, the treasurer's job is probably the most important out of all the officers," says McPherson. "The board as a whole has a fiduciary responsibility to make sure it's budgeting adequately and to make sure the association's books are in order, but the treasurer has to oversee that. The treasurer monitors the day-to-day financial health of the association."

Like the secretary, the treasurer can delegate responsibilities to a property manager. "But that doesn't relieve the treasurer of the ultimate responsibility," says Polomis. "I've had associations say, 'We're professionally managed, so take the treasurer's responsibilities out of the bylaws.' I won't do that for two reasons. In Minnesota, there are two offices mentioned in the statute—president and treasurer. In addition, your treasurer is still responsible for those responsibilities even if you have a manager. So when there are questions like, 'How are we doing on collections? What kind of money do we have? When do our certificates of deposit come due? those questions typically come up at a full, open board meeting. But the treasurer should make sure the association has those conversations either at a board meeting or

elsewhere because ultimately that's the treasurer's responsibility."

The same is true in Florida. "The role of the treasurer is based on how active the property manager is," says Zifrony. "An active property manager would do the functions of the treasurer, but treasurers aren't relieved of their responsibilities. They should probably meet with the property manager once a month to go over the finances and should present the financial reports at the meeting. If there's no property manager, the treasurer accounts for payments and bills that come in."

In Arizona, each association is required by law to do a financial review or compilation. "The statute doesn't give us any definition of what that means, so we tell clients to do a standard audit," says Rosenbeck. "The treasurer will be responsible for getting documents together, and if the treasurer needs to hire a CPA, the treasurer can do that. But if there's no money for an audit, the treasurer may do the review or compilation."

Your Fiduciary Responsibilities

No matter what your position, every board member and officer has a fiduciary duty to act in the best interest of the association as a whole. You must exercise sound business judgment, respect the confidentiality of board deliberations and decisions, and avoid real and perceived conflicts of interest. In short, you must execute your responsibilities in good faith, with good judgment, without conflict, and by always putting the association's interest above your own.

[Justin D. Park](#), an attorney at Romero Park & Wiggins PS in Bellevue, Wash., who advises associations, regularly preaches about fiduciary responsibilities to boards because he has seen officers' breaches of fiduciary duty first-hand, along with the devastating effects of those breaches. Here are just two examples Park offers to impress on boards and officers their responsibilities.

"I represented an individual owner who was doing a major renovation on a house. The homeowners association was on a hill, so everyone had views that needed to be protected. My client was increasing his home's height substantially, and he was trying to play by the rules, so he went to the board to get approval for his design. One of the people on the board who was also an officer was the person who lived across the street and uphill from my client's home whose views were going to be impacted—if they were going to be impacted at all.

"Instead of recusing herself, this person became the single most active board member in the decision and procured a rejection of his plans to protect her own views. In a lawsuit, the court ordered the board to approve the plans as submitted, and the board ended up paying my client's attorneys fees, which were more than \$10,000. The association also had to pay its own attorneys' fees, and the case went up to the appellate court, so the fees were significant.

"In this case, there was a personally interested director who not only didn't recuse herself but who took an active role in a decision in which she was personally involved. That's a no-no. Just because you're on the board, you can't promote your own interests above the community's interest or other owners' interests. This officer should have recused herself saying, 'I'm not going to take a role, and I won't vote. But as a homeowner here's what I have to say.'"

In the second case, "my client was the board for a large condo association. Before I began representing the association, the previous board had decided to change the method of calculating assessments to the net benefit of just about everybody on the board but to the detriment of the minority of homeowners with the smallest units, who bore the brunt of the recalculation

through increased assessments on their units. They sent out a ballot to all homeowners, and unfortunately the ballot was where the problem was. It had one question: 'Do you want your dues to be lower? Yes or no.' Of course, it passed by a huge margin, so the board changed the method of calculating assessments.

"A couple of boards later, the board looked at the method of calculation and realized it wasn't appropriate and changed it back. One of the people on the previous board sued the association for changing it back because her dues went up. The association ultimately prevailed because it was able to show the previous act was tainted because there were self-interested board members who had abused their authority by taking action that was purely in their own interest to the detriment of the other owners."

The bottom line? "The number one way to expose breaches of fiduciary duty to the light of day is to vote board members who commit them out of office," says Park. "As a board member, the ultimate sanction is being thrown off the board. But most of the time there's board action that's inappropriate, the majority of the board has supported it, so those people aren't going to vote one person off. The board could also bring suit against an individual board member who's acted inappropriately, but I've never seen that done."

"You have to remember that you can cost your association a lot of money by taking action that breaches your fiduciary

duty," adds Park. "Most governing documents include provisions for attorneys' fees to the winning party in litigation. So when an association loses, it's saddled with its own fees and the other party's. It can be devastating to an association, and other board members have to say to themselves, 'We're going to be the ones to pay for this, so we'd better step in.'"

Living Up to Your Fiduciary Duty as an HOA Board Member

Though this may be news to many homeowners diligently serving on association boards throughout the country, by stepping up to the plate and agreeing to volunteer your time and effort, you're agreeing to act as a fiduciary on behalf of your fellow owners. That's not just a big word. It carries legal consequences if you—even unknowingly—breach that duty. Here's what you need to know about fulfilling your fiduciary duty as an association board member.

What Fiduciary Means

"Being a fiduciary means that you have an obligation to take off your hat as a homeowner and put on your hat as an officer of a corporate board and use your best business judgment," explains [Sima L. Kirsch](#), a principal at the Law Office of Sima L. Kirsch P.C. in Chicago. "That's the judgment that best applies to the facts you're dealing with and protects the fiscal and structural security of the building and the association and the well-being of its inhabitants."

"When you're acting as a fiduciary, you're serving in a representative capacity, and you must put the interest of the association's homeowners collectively first," says [Michael S. Hunter](#), an attorney

and partner at Horack Talley in Charlotte, N.C. "You must also exercise sound business judgment and a healthy dose of common sense."

There's also a confidentiality aspect of being a fiduciary. "For example, if there's an attorney-client privileged communication between the board and its attorney, by telling a third party that you were in a meeting with an attorney and this is what was said, you've just blown the confidentiality of that conversation," explains Justin Park. "Or a lot of times boards want to keep initial discussions on dues and contractual obligations confidential. If the board says those things must be kept confidential, board members have an obligation to abide by that."

Park has encountered confidentiality issues first-hand while representing an association that had been sued by a homeowner. "The association split into a couple of factions. One group supported the homeowner, and the other didn't," he explains. "I had to explain to board members that they were the opposing party in the lawsuit brought by the homeowner and that regardless of how they felt about that homeowner, if they were at a meeting at which the lawsuit was discussed, they couldn't tell the

homeowner about the discussions. One board member recused himself from the discussions saying, 'I can't tell you that I'm not going to talk to this homeowner.' We were glad he did. It was the responsible thing to do."

Beware Other Breaches

A conflict of interest can also become a breach of your fiduciary duty. "If there's a matter before the board in which you or a family member has an interest," advises Hunter, "you should recuse yourself. You need to avoid even the appearance of impropriety."

You can also breach your fiduciary duty by failing to do the regular tasks that are involved in overseeing an association. "Board members can breach their duty when they don't hold regular meetings, don't pass their budgets properly, or treat some owners differently than others," says Kirsch. "There could be one owner that the board lets slide on assessments, while another is sent a late notice."

Though the term "fiduciary duty" sounds amorphous, it's not that hard to apply in everyday association management. You'll be safe if—regardless of the task you're performing as a board member—you execute your responsibility in good faith, with good judgment, without conflict, and by always putting the association's interest above your own.

Solving Common Problems

Most boards Nancy Polomis works with function well as a group. “I don’t see a lot of tension among officers because most boards work as a unit,” she says. “The decisions are the decisions of the board rather than [the decisions of] any particular individual.” But any time you have different personalities trying to work toward common goals, you’ll have disagreements. Though conflicts are common, there are ways to minimize them. Here are a few recurring problems and suggested solutions.

1) Confusion over roles or procedures

“If there’s any question, first go to definitions of the officers’ roles in your bylaws,” suggests Kristen Rosenbeck. “They’re usually pretty nondescript, so you’ll probably have to set forth your own rules and procedures. If you’re arguing over what to include in the minutes, you might say, ‘Our board is going to follow the parameters of [Robert’s Rules](#).’ Then you should be able to go to Robert’s Rules, which says, ‘This is how minutes should be taken.’ Create a third party, whether it’s Robert’s Rules or your attorney, and have that third party be a guide for alleviating tensions among the board members.”

Matt Zifrony also stresses the importance of communication. “Tensions among officers about roles comes back to

the same thing as in society as a whole—it’s called communication,” he says. “If you have a strong president who delegates and makes it clear what everybody’s role is, that removes the possibility of people stepping on others’ toes. It’s when you don’t have the proper communication and people who aren’t clear of their roles that you have tension. One agenda item I highly recommend all boards have is the president’s report. Let the president communicate the types of things he’s doing on a day-to-day basis so the board members don’t feel like they have to get in the way and do things themselves.”

2) Personality conflicts

Clashes typically arise when too-strong members either try to run the show or aren’t officially running the show. “Usually what I see are personality conflicts,” says Polomis. “Occasionally, you’ll have someone with a strong personality who for whatever reason isn’t serving as president and is trying to take over. Sometimes the president doesn’t care as long as the work gets done. But if it becomes a problem, the president has to say, ‘I appreciate your help, but this is a part of the meeting I need to run. You’re the secretary. You take minutes.’”

On the flip side, when a too-strong president takes over, the board has to step in to moderate the president's influence or be responsible for the outcome itself. "Some presidents do have the little power trip, and boards are perfectly happy letting them do everything and having the control," explains Polomis. "But we had one association in which that's exactly how the president ran the show—it was his own personal association—and he made some horrendous decisions that had significant repercussions. The board was nice, and they let him ramrod them. Later, the board wanted to sue the president, but we reminded the board that it would have to sue everybody on the board. That came as a huge blow to them. We had to tell the board that it's fine if you want to let somebody run the show, but you're still responsible for the decisions the board makes. If you're the yes-man or even if you stand up for your beliefs, you're still responsible for the decisions made."

If you've got a bully president you haven't been able to rein in, you may have to kick the person out of office. "The board may be able to remove that person as an officer, in which case the person would be on the board but not in a governing role," says Rosenbeck. "In Arizona, removing a director is covered by statute and has to be approved by the members. One way to avoid that is to remove that person from his officer position. If that happens, his ego may be bruised, and he may resign altogether."

3) Conflicts over priorities

If your board members can't resolve disputes over which issues should take priority, your president needs to take a firm hand. (Of course, if it's your president who won't allow the board to make sound decisions, you'll have to remove the president.)

"Let's say there's a problem with the landscaper. It would be the president who would put that on the agenda," explains Zifrony. "If another board member were unhappy with the president's decision not to put an issue on the agenda, the only thing that board member could do is say, 'I'm unhappy. Could you put this issue on the agenda?' The president can still say no. Could the other board member bring that issue up at the meeting? Yes, and the president could say, 'I'm not recognizing you.'"

As president of his homeowners association, Zifrony says he puts items on the agenda at members' request to show respect for fellow members. If, however, there were a real conflict about whether the issue needed action, he could direct the board to table the issue. "When the discussion took place, I could say, 'I think this is a good discussion. I'm not prepared to do a motion today. Let's think about this, keep our eyes open, and revisit it at a later meeting.'"

The key to smooth board operations is education. "As soon as you seat new board members, whether your association is self-managed or has a management

company, those board members need to understand their particular role,” says Duane McPherson. “The best method for success is to talk to members prior to the election or right after to let them know the role and duties of officers so they have a working knowledge before they get on the board. Get them to understand that they’re part of an organization and that it must run in a democratic way. They don’t have to toe the line, but they must have a basic understanding of their particular role and how it fits into the organization. That requires education and patience from the entire board.”

Zifrony couldn’t agree more.

“Ignorance of the law isn’t an excuse when you’ve broken the law, and ignorance of your responsibilities on a board isn’t an excuse for poor performance, either,” he says. “In most instances, people are motivated for the right reasons in getting on the board—they want to help out. But people seem to forget that they’re responsible for understanding what their obligations are as board members and if they take on the role of an officer. To assume those positions without knowing your responsibilities could do a disservice to the community you’re trying to help. But it could also open you up to personal liability. Motivation is great, but you need to do some homework so that you don’t overlook your responsibilities.”

HOA Board Member Orientation: Help New Board Members Hit the Ground Running

Should your association have an orientation for new board members? Experts are unanimous, and their answer is an emphatic yes.

"I have a client association that has done new-board member orientation yearly," says [Justin D. Park](#), an attorney at Romero Park & Wiggins PS in Bellevue, Wash., who advises homeowners associations. "They call it their board retreat, and they do it right after the new board members are elected. I think it's been really, really helpful."

Why not just send out information that board members can review on their own time? "At regular board meetings, you usually have two groups of board members: those who come rain or shine and those who attend as their schedule allows," explains Park. "Any time you have all of them together as a captive audience and go over things that pertain to all of them, they start to act as one body."

Here's what to cover in your new-board member orientation.

1) Define your association.

"Discuss the type of associations there are and the differences between such things as a condominium association and a planned development," advises [David C.](#)

[Swedelson](#), principal at Swedelson & Gottlieb, a law firm that represents associations in the Los Angeles area. "I got a call the other day from a client who said, 'We're having a debate over termites. Our manager says we're a planned development, and we think we're condos.' In that association, owners own the building and the ground under it, which is different from a condo where you own the air space. A lot of people don't understand the difference." The differences, of course, affect owners' rights and responsibilities, including who's responsible for which maintenance and repair tasks.

2) All the association's business.

"Give a rundown of everything the board has done as an association," advises Park. "Discuss events, budgets, disputes, the collection of dues and assessments, and legal issues. My client goes through the whole slew of what the board has done to bring the new members up to speed."

3) What it means to be a fiduciary.

"My specific job at the board retreat has been to talk about the duty of board members as fiduciaries to the association," explains Park. "There's to some degree an inherent conflict between

being an association member and a board member. As a board member, you're required to look out for the best interest of the association as a whole. That may or may not be in conflict with your interest as a member."

[Penny L. Koepke](#), an attorney at Ekmark & Ekmark LLC, a Scottsdale, Ariz., who represents homeowners associations, also suggests a detailed discussion of board members' fiduciary duties. "Give an explanation of what their fiduciary obligations are and things that could get board members into trouble as far as perceived and real conflicts of interest," she says. "Really stress that they're directors of a corporation and need to treat the association as a business while setting aside personal agendas. Board members need to understand that their personal goals aren't always what's best for the community."

Privacy issues also arise when discussing board members' fiduciary duties. "As board members, they're privy to people's private information to some degree," says Park. "They have an obligation to protect that private

information."

4) The laws governing your association.

"Give a general overview of the state statutes that govern the association so board members are aware that there are laws out there," suggest Koepke. "Also discuss federal regulations, such as the Fair Housing Act."

5) Rules, rules, rules.

"Cover enforcement of governing documents," says Swedelson. "What should the board enforce, and what's involved in enforcement?"

Even if your association is small, orientation can be helpful. "If you have an association of 10 and all members are on the board, orientation isn't as important," says Park. "But the second you have a difference between regular and board members, it's absolutely critical. Board members have to understand that they have a larger responsibility. If they're not ready to take on that responsibility, they shouldn't be on the board."

Additional ways to help new members of your HOA board of directors:

- 1) Join HOAleader.com
- 2) Sign up for a free Group Membership Upgrade. When you join HOAleader.com you can add up to 9 additional members to your account—absolutely free. It's an incredible value. To sign up, go to the [members-only home page](#), and click the orange button that says "Set Up Group Membership Now."
- 3) Have your new board members download a copy of this report: HOAleader.com/HOA-Board-Roles

HOA Board Governance

A Model Code of Conduct for Board Members

There's no shame in admitting that sometimes you're not sure of your responsibility as a board member. Being a board member is a volunteer position, and few associations offer training that provides in-depth guidance for well-intentioned but inexperienced board members. That's why you need a model code of conduct for your board members.

If you don't think that a simple list of guidelines would help your board, think again. "The general consensus is that a model code is a good idea, and we find them really helpful," says Elizabeth White, a shareholder and head of the community associations practice at the law firm of LeClairRyan in Williamsburg, Va. "For a lot of board members, when they vote to approve a code of conduct, it makes them stop and think. But it also gives the rest of the board and management something to point to when a board member starts straying outside the appropriate lane. It gives them something objective to evaluate behavior against. It also prevents board members from saying, 'I didn't know that was inappropriate. I didn't know accepting a Christmas gift from my landscaper, who also happens to be the association's landscaper, wasn't proper.'"

That's why we've asked our experts

for their best advice on the conduct that board members should always follow, along with conduct boards should avoid. Here's that list.

1) Commit your time.

If you agree to be a board member, make your service a priority. Expect to attend as many meetings as you can, and attend almost all of them.

2) Know your rules, your budget, and your building.

Read, reread, and be well versed in your governing documents and prior minutes. Those documents are your foundation. Read all relevant materials before meetings so you're prepared to discuss issues and make sound decisions. Be very well versed in your association's budgetary requirements and restraints. Know such things as what it costs to heat the building and employ each doorman or security guard. Become an expert in your building and grounds. Know your building physically. Know what it takes to maintain the building, the landscaping, the facilities, and the roof.

3) Remember your fiduciary duties.

Recognize that board members operate in a fiduciary capacity, which means you're entrusted with the operation of the association and doing what's in the association's best interest, not even in the interest of the owners. Here's an example: Your association wants to purchase one of its own units for an on-site manager to live in. If you become aware that there's a unit for sale at a very favorable price, yet you buy that unit yourself, you've breached your fiduciary duty to the association. Instead, you should have first told the association of the availability of that unit. If the association voted not to buy it for whatever reason, you'd be free to buy it.

Acting in the association's best interest also means making decisions on the merits, not because you have an ax to grind or a personal agenda. Don't solicit or accept gifts, gratuities, or favors, especially with those given with the intent of influencing a decision. Don't seek preferential treatment from board members, committees, contractors, or suppliers. Don't receive compensation for serving on the board. Don't advance a personal cause by using your position on the board to enhance your financial status through the use of particular contractors or suppliers.

4) Know the professionals you're dealing with.

Be on a first-name basis with your manager, CPA, and attorney so that you

feel comfortable calling for advice and support.

5) Always comply with your governing documents and relevant laws.

6) Use competitive bidding.

The easiest way to avoid the appearance of impropriety in association contracts is to seek competitive bids for all projects over a certain amount, say \$500.

7) Work within the association's framework and refrain from unilateral action.

Discuss board business only at board meetings, not at ad hoc meetings. And remember that the board speaks with one voice. If there's a board decision you disagree with, once it's made, support it.

8) Always exhibit professional behavior.

Treat your constituents—unit owners—with respect and decency. You'll be surprised at how many problems don't happen when there's open dialogue between the board and association members. Don't harass association members or residents, and refrain from defaming anyone in the community, including your manager and attorney.

9) Maintain confidentiality of association matters when it's appropriate.

For example, if your association is involved in litigation with an owner, you should never discuss board actions and decisions about the litigation outside board meetings—ever.

10) Promptly disclose conflicts of interest, and take immediate action when one arises.

Here's an example: Your board plans to vote on a landscaping contract. Your brother owns a landscaping company. It's best if your brother doesn't enter the competition. However, if he does, at a minimum, you should announce that your

brother is one of the companies that will bid, and then you should leave the room and not take part in any discussion on the contract. Also insist that the board minutes note that you've recused yourself from the discussion and that portion of the meeting.

Sources: [Robert Galvin](#), a partner at Davis, Malm & D'Agostine PC in Boston who specializes in representing condos and co-ops; [Luigi Rosabianca](#), the principal attorney at Rosabianca & Associates in New York City, who advises condo associations and co-ops; [Elizabeth White](#), a shareholder and head of the community associations practice at the law firm of LeClairRyan in Williamsburg, Va.; [Marc A. Silverman](#), an attorney at Frank, Weinberg & Black PL who advises associations.

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