



*Navigating Community Associations:*

# LAWS, ROLES, AND STANDARDS FOR SUCCESS

Presented by Chadwick Washington Moriarty Elmore & Bunn P.C. | December 4th 2025 | Lindsey I. Davis, Esq.

# Sources of Authority - The “Governing Documents”

- Declaration of Covenants, Conditions & Restrictions (“Declaration” or “Covenants”)
  - Recorded in land records
  - Imposes land use restrictions and obligations on lots
  - Assessment obligation
  - Maintenance/repair responsibilities
  - Architectural control
- Bylaws
  - “Nuts & bolts” of operations - meetings/elections / quorum
  - Election of officers
  - Powers/duties of the Board
- Rules & Regulations (adopted by Board through Resolutions)
  - Clarifications/policies - further explains/fill-in-gaps of Declaration and Bylaws
  - Examples: pool rules / architectural guidelines (after first approved by ARC)



# Sources of Authority - Key Statutes

- District of Columbia:
  - DC Condominium Act
  - DC Nonprofit Corporation Act
- Virginia:
  - Virginia Condominium Act
  - Virginia Property Owners' Association Act
  - Virginia Nonstock Corporation Act
  - Resale Disclosure Act
- Maryland:
  - Maryland Homeowners Association Act
  - Maryland Condominium Act
  - Maryland Nonstock Corporation Act

All subject to local laws and county ordinances



## Key Federal Laws

- Fair Housing Act – protects against discrimination due to disabilities, race, religion, gender, nat'l origin, familial status (and additional classifications depending on state jurisdiction)
- FCC Regulations (limiting restrictions on certain satellite dishes/antennae) - See FCC FAQ at: <http://www.fcc.gov/guides/over-air-reception-devices-rule>.



# Role of Board of Directors

1. Boards oversee the management of the business and affairs of the entity they serve.
  2. High-performing Boards operate with a clear understanding of their roles, responsibilities and expectations and in a collegial fashion in which each director is fully engaged.
    - a. Boards exercise their decision-making powers collectively.
    - b. Judgment, however, is exercised individually.
    - c. Informed decisions require independent judgment and participation, as well as group deliberation.
- Source – American Bar Association - Corporate Director's Guidebook 7th Edition

Board Of Directors – broad authority to make decisions for Association

- a. Sets policies
- b. Approves budget
- c. Oversight of finances
- d. Promulgate rules
- e. Enforce covenants, rules and restrictions
- f. Hire contractors, manager and professionals
- g. Oversight of property

# Roles of Others

- Committees
  - Assigned tasks to assist Board
    - Such as Arch. Review Committee to review applications for exterior modifications
  - Charters recommended to define purpose(s), scope of authority, appointment/removal of members, etc.
- Management Agent
  - Carries out day-to-day tasks / contractual requirements
  - Assists the Board in making informed decisions
  - Record keeping / draft budget for board review
- Other professionals/contractors (Accountants; lawyers; engineers; etc.) -- Hire as needed – like any business
- Owners -- membership; elect directors; approve Declaration/Bylaw amendments; obligated to pay assessments and comply with governing documents

# Standards of Performance /Conduct

- The Fundamentals: Fiduciary Duty
  - Highest standard of care imposed by the law
  - Two fundamentals
    - Duty of Care – use the level of skill and care that a reasonable person would use under the circumstances.
    - Duty of Loyalty – must minimize potential and actual conflicts of interest – disclose before discussion/vote by the Board
- Good faith, informed decisions made in the best interest of the Association
- Maintain confidentiality (e.g., executive session discussions and documents)

The Board acts based on a majority vote and speaks through the president (or as delegated by the Board)

## Board of Directors - Standards for Performance (Continued)

- Limitation of Liability / Indemnification for directors & officers
  - Officers and directors are often indemnified by Association (against liabilities and expenses) if they are subject to a legal claim – but must act in good faith; no criminal conduct; no willful misconduct
    - For DC – check Bylaws
    - For VA and MD – check Bylaws and nonstock corporation act
- Insurance (D&O Liability coverage)
  - Recommend: obtaining D&O policy that includes coverage for defending against non-monetary claims and against discrimination claims



# Acting in the Best Interests of Association

- a. Put the interests of the Association ahead of your own.
- b. The Board acts with one voice.
- c. Know the boundaries/limits of your authority.
- d. Confidentiality.
- e. Disclose potential/actual conflicts of interest before Board votes. See §13.1-871 of the Nonstock Act.
- f. The Board must avoid conflicts of interest and self-dealing. Disclosure is key. Having an interest in a business that is contracting with the Association is permissible if there is full disclosure and approval.

# Board and Committee Meetings

- Open Meetings required
  - Board, committees and sub-committees
  - Designated owner comment period on agenda
  - Board cannot use work sessions or other informal gatherings to circumvent the open meeting requirements
- Notice of Meetings (Check Bylaws and applicable law)
  - DC: Notice of all Board meetings should be given to the Assn membership in way reasonably calculated to be seen by a majority of members.
  - Virginia: Regular - at minimum, notice to owners must be published where reasonably calculated to be available to majority of owners. Special meetings - at a minimum, notice to owners is published per above, but must be done on same date as notice is given to Board members.
  - Maryland: notice must be sent to each unit owner at least 10 days but no more than 90 days in advance

# Meeting Mechanics

Meetings are where decisions get made – Directors should be prepared to make decisions, i.e., reviewing board packages in advance and submitting questions to management in advance.

1. **Motion** – the motion comes first, before any substantive discussion of the agenda item. The Board is established to make decisions. If a contract is under consideration, then once the agenda item is clarified, there should be a motion made, i.e., “motion to approve X contract.”
2. **Second** – if a motion is not seconded, then that demonstrates a lack of support and the Board should not use its meeting time to discuss that motion. There may be an alternate motion, i.e., “motion to approve Y contract.”
3. **Discussion** (if necessary)
  - If all directors are in agreement, then no need for discussion – call the vote
  - If there is a need for discussion, then it can take place in a timely manner – not all directors are required to speak but each should be allotted time if they wish.
4. **Vote** – the vote can be called on a motion at any time – while unanimity is nice to have sometimes, it is not required. If the vote is clear from discussion, no need to continue discussing to convince any holdouts – they can vote against and their opposition will be recorded in the minutes.

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# Board and Committee Meetings

- Executive Sessions
  - Allowed for limited purposes:
    - Discuss personnel matters;
    - Consult with legal counsel;
    - Discuss and consider contracts, pending/probable litigation and violations of governing documents;
    - Discuss/consider personal liability of member to Association
- Motion to convene into executive session for stated purpose
- Official vote in open session

## Board and Committee Meetings (cont.)

- Minutes
  - Serve as official record of meetings – for open portions of meetings
  - Executive sessions (closed portions) - not necessary and not recommended (except for violation hearings), but if taken, be brief and keep separate from minutes for open portion of meeting
  - Not verbatim transcript
    - What was done, not what was said
    - Record presence of quorum, motions made/seconded, and votes
    - Convening into executive session upon motion for stated proper purpose & re-convening into open session
- Approve at very next meeting of that body

# Conduct Outside of Meetings

- Realize **how others perceive** your conduct and statements
  - Position of authority – assumption that are you acting on behalf of the Association or Board
- Remember **your role** as an officer or director
- Preserve **confidentiality**
- **Support the Board's decision** – even when personal opinion may differ
  - Disagreements are part of the governance process – unanimous agreement should not be expected
  - Do not undermine the Assn or the Board – speak with one voice once a decision is made
  - If you think Board has acted illegally or breached fiduciary duty, attempt to resolve internally.



## Special Note – E-mail Conduct

- Use sparingly – save deliberation for meetings
- But, if needed for business, respond timely
- Don't send when you're angry – save a draft!
- E-mails are discoverable in a lawsuit
- E-mails are easily forwarded – accidents happen –write with expectation that email will be read by third parties

# Fair Housing Laws

- Protects against discrimination in housing
- Protected classes: disabilities, race, religion, gender, nat'l origin, familial status (and in Va., elderliness, source of income, sexual orientation, gender identity, and military status)
- Discrimination includes, for example:
  - Intentional discrimination / coercion / intimidation based on protected class
  - Refusal to permit reasonable modifications, if necessary for full enjoyment of premises – at expense of disabled person; and
  - Refusal to make reasonable accommodations in rules, practices, policies or services when such accommodations may be necessary for equal opportunity for use & enjoyment of premises due to person's disability

\*\* Don't say "no", say "we'll get back to you soon"

# Fair Housing Laws “Hostile Housing Environment”

- HUD Federal Regulation (as of 10/2016)
  - Provides that Associations may be liable for allowing “hostile housing environment” = Unwelcome conduct due to protected class, that is so severe or pervasive it interferes with availability, terms, enjoyment, privileges of residency
- Whether HHE exists depends on “totality of circumstances” – context, severity, scope, frequency, relationships



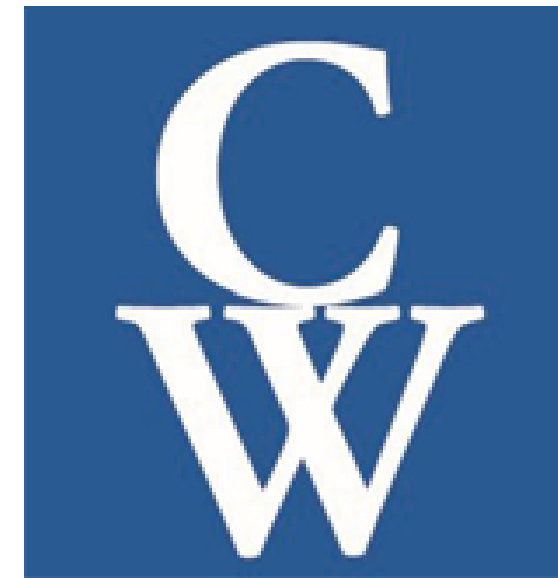
# Fair Housing Laws “Hostile Housing Environment”

- Association could be liable for its actions, its officers, directors, employees and managers – and third parties
- Assn must do what it has the power to do, even if getting involved in neighbor-vs-neighbor disputes
- If become aware of situation that might be a HHE, then must conduct investigation –
  - is conduct harassment based on “protected class”?
  - Does conduct violate covenants/rules?
- If so, what can Assn do?
  - demand letters
  - lawsuit seeking injunction

# Final Thoughts on Succeeding as a Director

1. Education – understand your job
2. Seek advice when needed – don't reinvent the wheel
3. Treat Assn like a business
4. Treat all players – even difficult members – with respect – every action makes a record
5. Ask questions, and understand the monthly financial statements
6. Set proper, professional tone as Assn representative –especially at meetings

# Questions & Contact



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