

TRANSPARENCY DOESN'T BITE

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Members of the Board of Directors are fiduciaries, the highest standard of care there is when acting to protect the assets of others and entrusted to do so. They have the serious duty of trying to protect the assets of the association members and to be accountable to the members for those actions. Keeping secrets from members, unless allowed by law, can actually end up with those secrets costing the individual members their personal protections allowed by NRS 116 and NRS 82.

NRS 82.221 Directors and officers: Exercise of powers and performance of duties; personal liability.

1. Directors and officers shall exercise their powers in good faith and with a view to the interests of the corporation.

2. In performing their respective duties, directors and officers are entitled to rely on information, opinions, reports, books of account or statements, including financial statements and other financial data, that are prepared or presented by:

(a) One or more directors, officers or employees of the corporation reasonably believed to be reliable and competent in the matters prepared or presented;

(b) Counsel, public accountants or other persons as to matters reasonably believed to be within the preparer or presenter's professional or expert competence; or

(c) A committee upon which the person relying thereon does not serve, established in accordance with [NRS 82.206](#) as to matters within the committee's designated authority and matters on which the committee is reasonably believed to merit confidence, but a director or officer is not entitled to rely on such information, opinions, reports, books of account or statements if the director or officer has knowledge concerning the matter in question that would cause reliance thereon to be unwarranted.

3. A director or officer must not be found to have failed to exercise his or her powers in good faith and with a view to the interests of the corporation unless it is proved by clear and convincing evidence that the director or officer has not acted in good faith and in a manner reasonably believed by him or her to be with a view to the interests of the corporation.

4. Except as otherwise provided in the articles of incorporation or [NRS 82.136](#) and [82.536](#) and [chapter 35](#) of NRS, no action may be brought against an officer or director of a corporation based on any act or omission arising from failure in his or her official capacity to exercise due care regarding the management or operation of the corporation unless the act or omission involves intentional misconduct, fraud or knowing violation of the law.

5. The articles of incorporation may impose greater liability on a director or officer of a corporation than that imposed by subsection 4. (Added to NRS by 1991, 1269; A 1993, 997) [Emphasis Added]

NRS 116.3103 Power of executive board to act on behalf of association; members and officers are fiduciaries; duty of care; application of business-judgment rule; limitations on power.

1. Except as otherwise provided in the declaration, the bylaws, this section or other provisions of this chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are fiduciaries and shall act on an informed basis, in good faith and in the honest belief that their actions are in the best interest of the association. The members of the executive board are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business-judgment rule.

2. The executive board may not act on behalf of the association to amend the declaration, to terminate the common-interest community, or to elect members of the executive board or determine their qualifications, powers and duties or terms of office, but the executive board may fill vacancies in its membership for the unexpired portion of any term unless the governing documents provide that a vacancy on the executive board must be filled by a vote of the membership of the association. (Added to NRS by 1991, 557; A 1993, 2364; 2001, 3193; 2003, 225; 2005, 2592; 2009, 1734, 2797)

Why do you think that the State of Nevada's legislators have passed so many laws for our industry? It is because they continue to hear about the "horror" stories from owners who feel they have been abused. As we know, a majority of boards are not "bad", but many can be secretive and do try to hide by meeting

without the required notice to the owners, conducting business by E-Mail or finding ways to hide their actions from the owners.

Once members of the board start hiding actions from the owners, a vicious circle is created. The owners become demanding, accusatory, angry, resentful, frustrated, etc. The Board then acts accordingly by trying to hide more from the owners to keep them from becoming more demanding, accusatory, angry, resentful, frustrated, etc.

Rather than a mass exodus of the members of the board, how about trying some proactive steps by attempting to communicate more with the owners to eliminate “the circle.”

1. Make sure that all meeting of the board, except those required to be in executive session, are conducted in the open in front of the owners.
2. Make sure that the books and records are accurate and open for owners to review.
3. Tell the owners in small steps when problems are brewing as a huge special assessment dumped on them after it has been building for years it not appropriate. Your job as a member of the board is not to keep the assessments/fees as low as possible. You are required, by law, to maintain the common areas and adequately fund the reserves.
4. Let the owners in on the overall financial plan. Through the Investment Policy and other policies set by the Board, owners should be able to see what steps the board is taking to protect their money. Through the reserve study, they should be able to see how the assets are being protected and at what level.

Members of the Board can be held personally liable if they don't use experts, act as good fiduciaries and make decisions in the best interest of the corporation vs. some hidden agenda.

The bottom line is that the Board can't hide their heads in the sand nor try to hide their owners' heads in the sand when dealing with association decisions. Communication can go a long way to helping owners know what is being faced by the association and help them understand why the board is taking or not taking certain actions which may not seem obvious to an outsider (non-board member.)

Each director should look at him or herself and see if they are the problem. Did they get on the board with an agenda that isn't necessarily in the best interest of the whole? Did they get on the board to keep assessments down? If so, step back and see if you are the problem and try to rethink what is in the best interest of the Association and it's members and try to act as a good fiduciary vs. that person with the personal agenda. It will go a long way towards building harmony in your community and building trust with the owners.