

SO, YOU'RE ON THE BOARD...CONGRATULATIONS & CONDOLENCES . . .HOW TO BE A DIRECTOR

*by Arlene-Frances Ring
Clayton & McCulloh*

Congratulations! You've just been elected to the Board of Directors. First, there is the feeling of elation at what you have just accomplished (be honest now . . . everyone privately has a rush). Then it hits you. Oh my goodness, what have I gotten myself into? The answer: More than you have bargained for!

Unfortunately, too many people run for the Board to "beef up" their resumes and don't take the job seriously. It is a very serious commitment and should not be taken lightly. There are serious consequences for your actions as well as your inactions. Another all too common scenario is that many owners seek a position on the Board of Directors because they have a "secret" agenda. The argument has been made that serving as a director is a full time job. Some say serving as director is a very easy job requiring very little time and effort.

Whatever line of thought you may subscribe to, you still have a duty to run the Association as a corporation. Even though the Association is a not-for-profit corporation, it should still be run as a business. Try visualizing yourself as a corporate executive (which is what you are) and how a Board member of a for-profit corporation such as IBM, Exxon, or Microsoft would behave. As a director of your Association, you're a leader. You are expected to take charge and carry out your duties in a professional manner.

Many Directors feel that since they are not getting paid for the job, they can "take it easy." Keep in mind, however, that the manner in which you execute your duties will set the tone for the Association. Often directors choose not to enforce their documents because they don't want to cause "waves." Some directors fear repercussions if they actively enforce the Association's governing documents. This is not a popularity contest. It is highly unlikely that you will win the "Most Popular Person" award. As a director, it is your obligation to make tough decisions. No one said (or at least no one should have said) this job was going to be easy. If they did, they lied! I have yet to meet the director who did not have to make at least one difficult decision during their term. In this writer's opinion, if any director truly felt that they did not have to make at least one difficult decision, then one should question if this director was truly serving the community or merely being a figurehead. Unfortunately, it is becoming an ever increasing trend for owners to sue the Board of Directors for failing to fulfill their fiduciary duty to the Association. This same shortcoming is being given as a reason for owners refusing to pay their assessments. Today's owners want to "see" what their Board of Directors is doing. They are no longer content to just pay their dues and accept at blind faith that their elected leaders are acting in the owners' best interests.

While your Association is a corporation and must abide by the Florida Statutes governing corporations, never forget that this is your neighborhood. You have to live there. Unlike an executive with IBM, when you retreat to your castle in the evening, your "shareholders" are right next door and you have to live with them. Don't become one of the "dreaded gestapo." Be reasonable and fair in your decisions and thought processes.

Don't make decisions by yourself. Keep in mind that you are only one of several directors. Each decision should be a Board decision, **not** your personal decision. When going through the process

of making a decision, remember to act in the *best interests of the association*. You must try to “put on blinders” when making decisions that affect the association.

Do not act in your own personal best interest or at least, not in your own personal *self* interest. If there is a vote to be taken or matters to be discussed in which you have a personal interest, remove yourself from the room while the remainder of the Board is discussing the issue (called “recusing” yourself), and abstain from the formal vote after stating your reason for abstention.

As was discussed earlier, many directors go on the board to fulfill a “secret agenda.” Learn to recognize other directors’ hidden agendas. Knowing this information, better assists you in dealing with such board members and finding ways to better channel their efforts. All directors have pet projects they would like to see brought to a successful end, but they should be projects that are in the best interests of the Association as a whole, not just a chosen few. You might want to have a director assigned to each of the committees within the association, although not necessarily the chairman of the committee.

The most important step you can take in becoming a successful director is to become educated. Familiarize yourself with your association’s documents (Declaration of Covenants & Restrictions or Declaration of Condominium, Articles of Incorporation, Bylaws, and Rules and Regulations). In particular, learn the provisions regarding director duties, meetings, assessments, and covenant enforcement. You may want to place the documents in a three-ring binder and then use divider pages to mark special sections. Highlight the frequently used sections such as annual meeting and board meeting requirements, document amendment provisions, collection of delinquent assessments provisions, and use restrictions. While it is not necessary to memorize the Association’s documents, you should become familiar enough with them so that you are comfortable.

Make sure your association has provided you with a recorded set of documents and all of the recorded amendments to these documents. If you are looking at an unrecorded set, you may not be working with the legally binding documents of the Association. How do you know if the documents are recorded? There will be stamped information on each page showing that it was recorded in your county and the OR Book __, Page __ where it can be found in the Public Records of your county. Each page of your documents should have this stamp with successive page numbering. The exception will relate in the case of older homeowner associations as to the Articles of Incorporation and Bylaws for the association. Another exception relates to Association Rules and Regulations, which often are not recorded.

Remember that you were elected to enforce the Association’s documents. It doesn’t mean that you enforce only what you think should be enforceable. A director can’t pick and choose what will be enforced. To do so, opens up the Association and maybe the director to all sorts of liability. Eventually, you could find yourself in a lawsuit where you are on the losing end because you “selectively” chose what document provisions you wanted to enforce.

Not only do you need to become familiar with your Association’s documents, you need to keep abreast of the laws and trends affecting community associations. The Florida Legislature makes changes to chapters pertaining to community associations on a yearly basis. New software for keeping the Association’s books and for creating eye-catching newsletters are coming out constantly. How do you find out this information about the ever-changing laws and community association trends? The following are some suggestions on keeping abreast of what goes on in the community association industry:

- Some law firms and some other interested trade organizations offer free seminars on association law. (Note: Clayton & McCulloh offers seminars each year throughout Central Florida on how to be a director.) Some of these seminars also include practical, day to day advice for directors. Not only should you try to attend these educational events, but you should encourage your other board members and owners to attend. In fact, distribute flyers to the community inviting the other owners to attend or post the information where you display your meeting notices. This is a great way for you and others in your community to get some free advice and a chance to talk to directors in other associations about their problems and what successful (or unsuccessful) solutions they implemented.
- Set aside a portion of your budget for industry periodicals, such as *Condominium Times*, *Condo/HOA Management* (covering both condominium and homeowner articles). Another valuable source of information is the syndicated column, *Condo Living* which appears in the **Orlando Sentinel** and the **Ledger**.
- Become involved with organizations that cater to community associations such as *Space Coast Condominiums Association*, *Orange County Homeowners Association*, and *Community Associations Institute (CAI)*. The two aforementioned organizations are education oriented and offer informative monthly meetings. In addition, CAI offers outstanding publications such as their Gap Reports which cover such items as collections, contracts, bid specifications, and even information on how to be an officer in your association. Reimburse board members for their expenses when attending educational functions. Simply have them present to you a receipt that reflects they attended the event. Don't forget to budget for these items. (Note: for information on these organizations, please see our Director of Client Services.)
- Hire professionals which practice primarily or specialize in the community association industry. For example, there is a difference between hiring a real estate attorney and a community association law attorney. This thought also applies to insurance agents and accountants.
- If your Association does not employ professionals such as attorneys, accountants, and insurance agents, begin a search for these professionals. Even if you do not have an immediate need for one of these professionals, hire them now before you have a problem. Some of these professionals have complimentary services that can benefit your Association in the interim before the need arises to utilize their services.
- In addition, they will have secured the necessary documents for the occasion when you will have need of their services. For information on selecting legal counsel for your Community Association, Clayton & McCulloh provides a free informational pamphlet entitled, "How to Select Legal Counsel for Your Community Association."

One of the most important things you can do as a director is getting to know the owners. Upon being elected to the board, consider dividing up the owners' telephone numbers and have each director call the owners individually to introduce himself or herself. This could be one of the most important things you do as a director. Remember, the time will come when you will need your community's support, and this is one way to start building interest. No one wants to be a "number." By making the first contact when there is not a problem, a foundation of trust is laid. It is the first step toward establishing a positive relationship with the community and earning their trust and support.

If an owner provides you or the board with their proxy for a meeting, consider writing a note afterwards thanking the owner for their vote of confidence in you and expressing your appreciation for their assistance in making their voice heard at a meeting even though they could not attend. Little things like a thank you note will go a long way to better relations with your owners.

Finally, there is a misconception that if you are the president of the association, you must abstain from voting at Board Meetings unless there is a tie. You should always vote on all issues unless you have a personal stake in the issue at hand. An example of when you should not vote would be if the Board was voting on your request to change the color of your home or if a relative of yours had submitted a proposal to provide services to the association.

The rewards of serving on the Board can be tremendous. There can be tremendous satisfaction in knowing you've taken an active role in shaping your community. By serving on the Board, you are afforded the opportunity to meet your entire community and to make new friends. Conversely, you might make new enemies as well, but the rewards will outweigh the negatives. So, my condolences for the trials and tribulations you will encounter as a director and my heartiest congratulations for undertaking a challenging endeavor. Welcome to the world of Community Associations! 📧

Arlene-Frances Ring is the Director of Client Services at Clayton & McCulloh and a former President of her homeowners association. She has networked with thousands of community associations is a past president of Community Associations Institute (CAI) , and has been a paralegal for more than twenty-five years. She is a frequent speaker for such groups as Clayton & McCulloh, Space Coast Condominium Association, and the Orange County Neighborhood Partnership Program. Additionally, she has been widely published in various community association trade magazines.

Clayton & McCulloh specializes in Association Law and services 450 Community Associations in twenty-two counties in Florida. They have three offices: their main office is in Maitland, and they have two branch ones - one in Daytona Beach and another in Indian Harbour Beach.