



Ten Things Every Newly Elected Community Association Board Member Should Know

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Ten Things Every Newly Elected Community Association Board Member Should Know

By Hans C. Wahl, Esq.

As we move toward the end of 2016, many community associations will have their annual meetings where elections are held and newly elected members assume their roles within the board of directors for the first time. Being a board member is a major commitment, both in terms of time and responsibility. Because most association bylaws state that board members shall serve without compensation, those who serve truly do so because they love their communities and desire to improve them. Despite those good intentions, many newly elected board members are not familiar enough with association governance to make an immediate and positive impact on their communities. This blog post is for the newly elected director and lists the ten things every community association board member should know.

1. **There is a process for reinstating the rules and regulations that went unenforced by prior boards:** Did you run for board membership because prior boards failed to enforce the community's rules and regulations? That inconsistent enforcement of rules can now lead to a "selective enforcement" defense by the community membership. However, that defense can be avoided, allowing the rules and regulations to be enforced consistently once again, if the new board follows the proper procedures. In short, the new board must send written notice to every member, citing the rule, regulation, or bylaw to be enforced and the date in which enforcement will begin uniformly for everyone.
2. **Have a timely meeting with the association's attorney to discuss all outstanding legal matters:** It is imperative that new board members have a thorough understanding of all current legal matters involving the association. The prior board may have taken a "hands off" approach to legal issues, or the new board may disagree with the direction the prior board was going with certain legal actions. Some boards do a terrible job of communicating with the association's attorney and some attorneys do a terrible job communicating with the board. Therefore, a new board should make it a priority to discuss all current legal matters with their attorney and establish good communication channels at the outset.
3. **Create a formal collection policy and strategy to address delinquent unit owners:** Board members have a fiduciary duty to maintain the association's budget. Unpaid assessments will ultimately become a liability for all responsible members in the form of higher assessments across the community if the delinquent accounts are not timely addressed. The Florida Statutes provide community associations with great power and numerous collection tools for addressing delinquent assessments. Unfortunately, many boards procrastinate and fail to act, which hurts the association and its responsible members. Not to mention this procrastination and lackadaisical approach to delinquent assessments could be a breach of the board's fiduciary duty to the association. The best thing a new board can do is meet with their attorney to develop a formal collection policy and strategy, and then implement it to maximize assessment revenue and maintain the overall budget.

4. **Associations can collect unpaid assessments from an owner's tenants:** How frustrating it must be to have a property owner collect rent each month while he or she is months behind in assessment payments to the association. Both the Florida HOA Act and Condominium Act allow associations to make a demand of tenants for their rent payments until the owner's past-due assessments are paid in full. If the tenant complies, the owner cannot evict the tenant. However, if the tenant refuses, the association *is able to evict the tenant*. This is a powerful collection tool that associations should utilize but oftentimes overlook.
5. **Don't ignore lender foreclosure actions:** Most associations get served with the lender foreclosure complaint and then set it aside and forget about it. Ignoring lender foreclosure actions can be a costly decision. First, lenders are not always in a hurry to foreclose so the action could linger on for years. This keeps the property out of the stream of commerce with no assessment revenue for the association. Second, once an association appears in a lender foreclosure action it has the statutory ability to expedite the foreclosure process. This forces banks to foreclose sooner rather than later, take ownership of the property and make those assessment payments to the association.
6. **Boards can suspend the use-rights and voting rights of unit owners:** Both the Florida HOA Act and Condominium Act allow the board of directors to hold a vote for suspending certain members from using the community amenities and suspending voting rights as well. Such suspensions can be enforced for violations of community rules and regulations and for the non-payment of assessments. In my experience, the associations that use the power granted to it by the Florida Statutes are the associations with less overall problems from their members and tenants. Conversely, those that fail to properly address problems end up dealing with more costly issues in the long run.
7. **Be sure to address possible construction defect claims against the developer:** Some boards procrastinate on identifying potential construction defect issues and pursuing claims that can be rightfully made against the developer for those defects. Don't let your board be guilty of this. The statute of limitations on most construction defect issues is four years, with a maximum ten-year limitations period in certain situations. One of the first things a new board should do is have the common areas professionally inspected for potential construction defects.
8. **Know the law on lender liability for unpaid assessments on foreclosed properties:** The Florida Statutes state that a lender who acquires title to a property through foreclosure is only liable for the lesser of the prior 12 months unpaid assessments or one percent of the original mortgage debt. This is known as Florida's Safe Harbor protection and most board members are somewhat familiar with this rule. But what many board members do not know is that there are many exceptions to this protection that could make a lender responsible for the entire debt owed by the prior unit owner. For example, this protection only applies to a first mortgagee, not a second mortgagee. Moreover, the first mortgagee must have named the association as a defendant in the foreclosure action, and if there has been an assignment of the underlying mortgage along the way it may destroy

this protection if not executed properly. It is wise for a board to always have their association attorney analyze the lender's liability before conceding to a reduced payoff.

9. **The requirement for board members to read the association's documents:** The Florida Statutes require that within 90 days after being elected to the board, the new board member shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws and written policies; that he or she will work to uphold such documents and policies; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. However, in lieu of this written certification, the newly elected board member can complete the educational curriculum administered by an approved education provider within 90 days of being elected.

10. **Amending the association's governing documents can be very beneficial:** The Florida HOA Act and Condominium Act, over the past 10 years, have been amended and revised numerous times to provide associations with more rights, power and available remedies. However, many declaration and bylaw provisions are outdated and fail to delegate to the board the power it may now have available under the Florida Statutes. Having an experienced association attorney review older declarations and bylaws for possible revisions could end up paying dividends back to the association in the long term.

