

Voices Community Meeting Agenda December 12, 2023

Meeting Norms: Please raise hand to speak; no personal criticism will be allowed; to ensure everyone gets a chance to speak, please limit each instance of speech to 3 minutes

Voices Vision Statement: To provide a forum for discussion of positive outcomes focused on improving and enhancing the quality of life at Woodside.

- A. Welcome and Meeting Norms (6:00–6:05)

- B. Introductions (6:05–6:20)

- C. Open Discussion of Recent and Upcoming Events (6:20–7:00)

- D. Upcoming Election (7:00–7:30)

Woodside Covenants, Conditions, and Restrictions (CC&Rs)

https://woodsidehoa.com/wp-content/uploads/2023/07/cc_rs_restated.pdf

Woodside Bylaws

https://woodsidehoa.com/wp-content/uploads/2023/07/restated_bylaws.pdf

Assembly and Meetings. Effective January 1, 2018, associations cannot prohibit members and residents from peacefully assembling or meeting with other members, residents, or their respective invitees or guests for purposes relating to (i) CID living, (ii) association elections, (iii) legislation, (iv) elections to public office, or (v) the initiative, referendum, or recall processes. (Civ. Code § 4515(b)(1).)

Canvassing and Petitioning. Associations cannot prohibit members or residents from canvassing or petitioning (1) members, (2) the association’s board, and (3) residents to participate in permitted activities (assembling, meeting, speaking with public figures, etc.). (Civ. Code § 4515(b)(4).)

Distributing Flyers. Members cannot be prohibited from distributing or circulating, without permission, information about (1) CID living, (2) association elections, (3) legislation, (4) election to public office, (5) the initiative, referendum, or recall processes, or (6) other issues of concern to members and residents. This is by far the broadest and most overreaching portion of the new law. The scope of information which may be distributed, without permission, is effectively unlimited. It need only be any matter which concerns a member or resident. (Civ. Code § 4515(b)(5).)

Source: <https://www.davis-stirling.com/HOME/P/Political-Activities-Flyers>

CID = Common Interest Development

HOA Duties

Civil Code § 4775. (a) Unless otherwise provided in the declaration [CC&Rs] of a common interest development, the association is responsible for repairing, replacing, or maintaining the common area, other than exclusive use common area, and the owner of each separate interest is responsible for maintaining that separate interest and any exclusive use common area appurtenant to the separate interest. (b) The costs of temporary relocation during the repair and maintenance of the areas within the responsibility of the association shall be borne by the owner of the separate interest affected.

CC&Rs 8.1 Association Responsibility. The Association shall provide maintenance, repair, and replacement of the Common Area and all facilities, improvements, and landscaping thereon, including private streets, private driveways, walks and utility facilities, except for those utility facilities which are maintained by public or private utility companies or agencies, and all other real and/or personal property that may be acquired by the Association, keeping such property in first-class condition and good repair. [...] The Association shall further be responsible for providing lighting, landscaping, gardening, and janitorial services for the Common Area, as needed, and shall cause any and all other acts to be done which may be necessary to assure the maintenance of the Common Area in first-class condition and repair, including (i) the painting of the exterior surfaces of the building(s) and such other portions of the Common Area as the Board, in its discretion, determines to be necessary, and (ii) the maintenance, repair and replacement of the mailboxes serving the Units.

Board Duties

Civil Code § 5500. Board Review of Finances Required. Unless the governing documents impose more stringent standards, the board shall do all of the following:

- (a) Review, on a monthly basis, a current reconciliation of the association's operating accounts.
- (b) Review, on a monthly basis, a current reconciliation of the association's reserve accounts.
- (c) Review, on a monthly basis, the current year's actual operating revenues and expenses compared to the current year's budget.
- (d) Review, on a monthly basis, the latest account statements prepared by the financial institutions where the association has its operating and reserve accounts.
- (e) Review, on a monthly basis, an income and expense statement for the association's operating and reserve accounts.
- (f) Review, on a monthly basis, the check register, monthly general ledger, and delinquent assessment receivable reports.

CC&Rs 5.5 Association Rules. The Board of Directors shall have the power and the authority to establish, promulgate, amend, repeal, and enforce such Rules as the Board deems necessary for the management and operation of the Project and the conduct of business and affairs of the Association. Such Rules may concern, without limitation, matters pertaining to use of the Common Area, including Exclusive Use Common Area; pets; signs; collection and disposal of refuse; minimum standards for maintenance of property; use of recreation facilities; parking and traffic regulations; rental or leasing of Units within the Project; use or prohibition of the use of skateboards, roller blades, bicycles and tricycles within the Project; and any other subject matter within the jurisdiction of the Association as provided in the Governing Documents or by law.

Bylaws 8.1 Powers. In addition to such other powers as may be expressly set forth in the Governing Documents or provided by law, the Board of Directors shall have the power to:

(paraphrased) Adopt and enforce rules and regulations, enter in contracts, determine whether a member is in good standing, impose sanctions and fines, hire a manager or management

company and other employees, employ professional advisors, invest reserve funds, enter units to make repairs, pay property taxes, merge with other nonprofits, conduct real or personal property transactions, indemnify agents, open bank accounts, borrow money, and other duties as needed.

Bylaws 8.2 Duties (paraphrased) Keep records and minutes; prepare a pro forma budget; have a reserve study conducted; use reserve funds only for maintenance; invest reserve funds; review operating and reserve accounts; review annual financial statement; notify homeowners of insurance coverage; send annual notifications to homeowners; supervise officers, agents, and employees; send fine schedule to homeowners; notify homeowners of and collect assessments; notify of increased assessments; provide assessment payment certificates; obtain insurance; enforce governing documents.

President Duties

Unless otherwise provided in the bylaws, a president's duties generally include:

- presiding over board and membership meetings,
- serving as liaison between management and the board,
- serving as liaison between the association's attorney and the board,
- serving as general manager and overseeing day-to-day matters, such as meeting with vendors, soliciting bids, etc. (unless a manager has been hired to handle those duties),
- co-signing checks with the treasurer or secretary,
- serving as an ex officio member of committees.

<https://www.davis-stirling.com/HOME/D/Duties-of-President>

Bylaws 9.8 President. The President shall be the chief executive officer of the Association and shall, subject to control of the Board of Directors, have general supervision, direction, and control of the affairs and the other officers and the employees and agents of the Association. The President shall preside at all meetings of the Members and at all meetings of the Board of Directors, shall have the general powers and duties of management usually vested in the office of the President of an Association, and shall have such other powers and duties as may be prescribed by the Board of Directors and the Bylaws, subject, however, to any limitations contained in the Declaration [aka CC&Rs].

Vice President Duties

The bylaws should describe the duties of the vice president. Normally, those duties are as follows:

- performs the duties of the president in the president's absence; and
- may be called upon by the president to share some of the president's duties.

<https://www.davis-stirling.com/HOME/D/Duties-of-Vice-President>

Bylaws 9.9 Vice-President. In the absence or disability of the President, the Vice-President shall perform all the duties of the President, and when so acting, shall have all of the powers of, and be subject to all of the restrictions upon, the President. The Vice-President shall have such other powers and perform such other duties as, from time to time, may be prescribed by the Board of Directors.

Secretary Duties

Unless the governing documents provide otherwise, a secretary's duties are as follows:

- oversee giving notice of board and membership meetings,
- ensure that minutes of meetings are taken and approved (can use assistant),
- sign a copy of the final, approved minutes,

- oversee the preparation of the membership list,
- file appropriate documents with the Secretary of State,
- as custodian of records, ensure that the association's records are maintained, and
- frequently co-signs checks with the president or treasurer.

The secretary may delegate many of his/her duties to the manager, management company, or an assistant, but must oversee the work.

<https://www.davis-stirling.com/HOME/D/Duties-of-the-Secretary>

Bylaws 9.10 Secretary. The Secretary shall keep or cause to be kept, at the principal office or such other place as the Board of Directors may prescribe, a book of minutes of all meetings of Directors, Members, and Committees of the Board setting forth the time and place of holding of such meetings; whether regular or special, and if special, how authorized; the notice thereof given; the names of those present at Directors or Committee meetings; the number of memberships and votes present or represented at Members meetings; and all the proceedings thereof. The Secretary shall give, or cause to be given, notice of all meetings of the Members and of the Board of Directors required by the Bylaws or by law to be given and shall maintain a proper record of the giving of such notice, and shall keep the books, records, and documents of the Association in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.

Chief Financial Officer/Treasurer Duties

Unless the governing documents provide otherwise, a treasurer's duties are as follows:

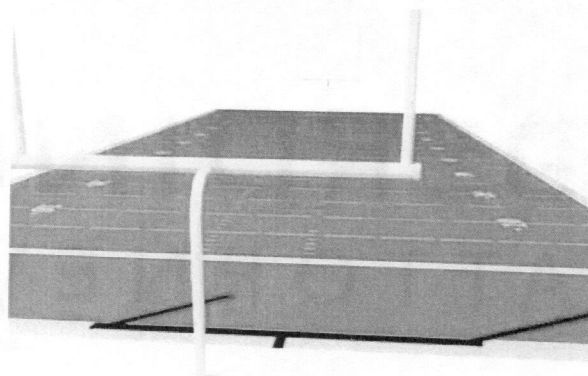
- oversee the association's operating account and reserve account,
- keep and maintaining the association's financial documents,
- oversee the deposits,
- oversee investments,
- ensure that bills are paid,
- oversee the preparation of the budget,
- ensure that a report of financial transactions are made to the board,
- ensure that a reserve study is prepared,
- serve as the board's liaison with the association's auditor,
- review monthly financial statements,
- implement safeguards to protect the association's financial assets,
- ensure that tax returns are filed on time, and
- sign bank cards and co-sign checks with the president or secretary.

<https://www.davis-stirling.com/HOME/D/Duties-of-the-Treasurer>

Bylaws 9.11 Chief Financial Officer. The Chief Financial Officer, who may from time to time be referred to as the treasurer, shall be responsible for the receipt and deposit in appropriate accounts of all monies of the Association and shall cause disbursement of such funds as directed by resolution of the Board of Directors; may sign all checks and promissory notes of the Association; shall cause proper books of account to be maintained; shall cause an annual review of the Association's books and financial statements to be made by a public accountant at the completion of any fiscal year for which such review is required by law or as determined by the Board; shall assist the Board in preparation of an annual budget and a statement of income and expenditures to be presented to the Members of the Association as provided by law; and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors.

BOARD MEMBER LEGAL DUTIES

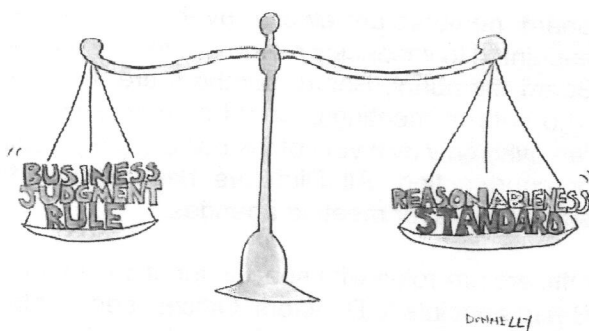
Board members are fiduciaries to their associations. A **fiduciary duty** is a high legal standard owed to the corporation. In common interest developments, the shareholders are the owners of the separate interests. (See, *Cohen v. Kite Hill Community Assn.*, (1983) 142 Cal. App. 3d 642.)



Fiduciary Duty is defined by Black's Law Dictionary as, "A duty to act for someone else's benefit, while subordinating one's personal interest to that of the other person. It is the highest standard of duty implied by law." It is the goal post of a Director's duty to always meet or exceed the threshold. Failure to fulfill the legal duty can expose a Director to potential personal liability. (See, *Raven's Cove Townhomes, Inc. v. Knuppe Development Co.* (1981) 114 Cal. App. 3d 783.)

1. **DUTY OF CARE** – Directors must engage in reasonable due diligence and investigation. In carrying out a Director's duty of care, they must:
 - A. Attend meetings and generally be informed about the association's business and affairs. This includes showing up prepared and having read the Board packets.
 - B. Reasonably investigate issues, claims, and matters within the Board's scope of authority. Ask questions and perform due diligence. Do not skip this step, ever!
 - C. Enforce association governing documents. While the means of enforcement is a business decision, the Board should strive for a consistent and uniform approach.
2. **DUTY OF LOYALTY** – Directors must avoid self-dealing. In carrying out a Director's duty of loyalty, they must:
 - A. Act in the association's best interest, even at their own expense.
 - B. The law is aimed at preventing financial conflicts of interest, but with associations, Directors are well-served in avoiding the perception of bias even on non-monetary matters and receiving favors not available to all owners.
 - C. Preserve attorney-client privilege and other confidential information (discipline, collections, Executive Session materials, etc.).

BUSINESS JUDGMENT RULE



In establishing whether a Director has fulfilled their fiduciary duty, courts use the "Business Judgment Rule" standard. It's not about making the *right* decision, it is about making a reasonably informed choice.

When Directors can establish they have fulfilled the tenets of the Business Judgment Rule, the courts will presume the Directors acted in good faith, even if the outcome is negative for the association. The only way to

rebut the presumption of good faith is for an owner or opposing party to provide fraud or gross negligence.

There are two laws applicable to Directors of common interest developments that outline the tenets of the Business Judgment Rule. Both these statutes require that the Director's actions fall within the scope of their authority. This does not mean a unilateral action by a Board member that would have fallen within their authority had it been approved by a majority of the Board will be covered: it will not.

1. **CORPORATIONS CODE §7231** – Directors must perform their duties in good faith, in a manner the Director believes to be in the best interests of the association, and following reasonable inquiry, as a similarly prudent person would make.

Directors can rely on relevant professional and/or expert advice, and even information provided by committees, unless they believe the committee's recommendations, reports, or information should not be relied on. Conversely, acting in a manner that falls outside of the Board's scope of authority and outside of what the association's experts and vendors recommend may expose the association to liability, and potentially the Director to personal liability.

2. **CIVIL CODE §5800** – Directors must act within the scope of their authority (under the governing documents or the law), in good faith, in a way that is not wanton, willful, or grossly negligent, and their association must have the required insurance in place at the time of the act.