

# BURDMAN & WARD

## ATTORNEYS AT LAW

Construction Defect Attorneys  
Tel. 888-350-9080  
www.burdmanlaw.com

Law in Hand

### FIDUCIARY RESPONSIBILITIES OF BOARD MEMBERS: HOW TO AVOID LIABILITY

**Primary Responsibility of Board Member:** Maintain and repair the common areas within your development while making a variety of decisions that affect the living conditions in your community.

**Fiduciary Responsibility of Board Member:** Act in the best interests of the association and use the care that an ordinary prudent person would use given the same circumstances.

#### Specific Fiduciary Duties:

- Execute contracts with vendors. Make sure contractor is licensed, bonded and insured. Check references, and secure at least three bids for significant work or repairs.
- Maintain adequate association, board member and officer insurance
- Become familiar with CC&Rs and By-Laws
- Maintain adequate reserves. Know your budget and spend accordingly. Example: It may be excessive to suggest a \$20,000 repair from reserves to roofing components in the second year of a development, when a warranty claim against the builder may be more appropriate.
- Investigate construction problems. The law requires that any condition which materially affects the value of the property, be disclosed. Board members have a duty to investigate and disclose any construction problems.

**Business Judgment Rule:** Exercise the same degree of care that a similar reasonably diligent person would under similar circumstances. In doing so, the board is entitled to rely on information, opinions, reports or statements, which have been prepared or presented by qualified people, such as property managers, attorneys, accountants, board committees, and other board members/ homeowners who are reliable and competent in the matters presented.

**Due Diligence:** Board members must make reasonable inquiry before making a decision.

**Tips to Avoid Problems:**

- Be diligent, do your homework, attend meetings, ask questions.
- Review board packets prior to meetings.
- Have a working knowledge of the topic before you vote on it.
- Solicit input from your professional manager – their education and experience provide a valuable resource.
- Bring in outside experts for input/presentations before voting on an issue.
- Talk to your community members. Nothing keeps your fingers on the pulse of your community like casual interaction with its members. You might learn more from a few minutes chatting at the mailbox than from an entire meeting.

**If you think you have potential construction defects, contact Burdman & Ward for a free, no obligation inspection with a licensed contractor.**

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