

In the Hot Seat: Making Board Decisions

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Community association directors are required to make decisions in a high-pressure environment in which a great deal of attention and scrutiny are focused on the board. Association members frequently hold strong and divided opinions regarding issues that affect their homes, personal finances and quality of life. Further, many issues are complex and require the board to consider multiple factors. This article addresses the legal framework for making board decisions.¹

Standard of Conduct for Directors Appointed by Declarant. The Minnesota Common Interest Ownership Act (“MCIOA”), Minnesota Statutes Chapter 515B, states that a director appointed by the declarant is a fiduciary of the unit owners.² A fiduciary has the highest obligations of good faith, loyalty, fidelity, fair dealing, and full disclosure of material matters affecting the client's interests.³ MCIOA also states that any of the declarant’s representatives who are acting as directors of the association must (i) cause the association to be operated and administered in accordance with the governing documents and Minnesota law; (ii) be subject to all fiduciary obligations and obligations of good faith that apply to any person serving a corporation in that capacity; (iii) cause the association's funds to be maintained in separate bank accounts in the association's name; and (iv) cause the association to maintain complete and accurate records.⁴

Standard of Conduct for Directors Elected by Unit Owners. MCIOA states that a director elected by the unit owners must act (i) in “good faith”, which is defined as “honesty in fact in the conduct of an act or transaction;”⁵ (ii) in a manner the director reasonably believes to be in the best interests of the association, and (iii) with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A director who meets this standard is not liable as a result of being a director.⁶ In contrast, a director is liable for acting dishonestly, unreasonably or negligently.

Reliance. As a general rule, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by (i) an officer or employee of the corporation whom the director reasonably believes to be reliable and competent in the matters presented; (ii) attorneys, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence; or (iii) a committee of the board on which the director does not serve as to matters within its designated authority, if the director reasonably believes the committee to merit confidence. However, a director is not entitled to rely on information, opinions, reports, or statements if the director has actual knowledge concerning the matter in question that makes such reliance unwarranted.⁷

Delegation. Pursuant to Minnesota corporate law, a board of directors may establish committees and delegate specific powers to committees by resolution. Directors remain subject to the standard of conduct for directors despite delegation of power to a committee. Committee members are subject to the same standard of conduct as directors.⁸ The board's authority to establish committees and delegate power may be limited by the association's governing documents.

Presumption of Assent. A director who is present at a board meeting when an action is approved by a majority vote is presumed to have assented to the action approved, unless the director (i) objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting; (ii) votes against the action at the meeting, or (iii) is prohibited from voting because of a conflict of interest.⁹

Indemnification. A corporation must indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, attorney fees and other expenses, if the person acted in good faith, received no improper personal benefit from the conduct at issue and did not violate conflict of interest prohibitions, reasonably believed that the conduct was in the best interests of the corporation, in the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful, and has not been indemnified by another organization. Subject to certain requirements, the corporation also must advance reasonable expenses, including attorneys' fees. The corporation's obligations regarding indemnification and advancements may be modified in the articles or bylaws, subject to certain statutory requirements.¹⁰

Insurance. Associations should maintain directors and officers' liability insurance to provide financial protection in the event of a lawsuit related to the performance of their duties. Community association boards should be familiar with all of the association's insurance policies and consult with an insurance agent who is experienced with assisting community associations to ensure that appropriate and adequate insurance policies are maintained.

¹ The information in this article is general information and does not constitute legal advice regarding action to be taken in any case. MCIOA does not apply to all associations, and the laws regarding directors may vary depending on the statute(s) that govern the association. Associations should consult with their attorney for assistance with making decisions in conformance with the applicable laws and governing documents and as appropriate for their particular situation.

² Minn. Stat. 515B.3-103(a).

³ Commer. Assocs. v. Work Connection, Inc., 712 N.W.2d 772, 779 (Minn. Ct. App. 2006).

⁴ Minn. Stat. § 515B.3-120.

⁵ Minn. Stat. § 302A.011, Subd. 13; Minn. Stat. § 317A.011, Subd. 10.

⁶ Minn. Stat. § 302A.251, Subd. 1; Minn. Stat. § 317A.251, Subd. 1; Minn. Stat. 515B.3-103(a).

⁷ Minn. Stat. § 302A.251, Subd. 2; Minn. Stat. § 317A.251, Subd. 2.

⁸ Minn. Stat. § 302A.241; Minn. Stat. § 317A.241.

⁹ Minn. Stat. § 302A.251, Subd. 3; Minn. Stat. § 317A.251, Subd. 3.

¹⁰ Minn. Stat. § 302A.521; Minn. Stat. § 317A.521.