

The board received several questions from homeowners at the biannual meeting and is sharing the following information on key areas of interest for the benefit of all members.

Board Meetings and Minutes

The board meets the second Tuesday of every month. The meeting locations vary dependent upon the availability of conference rooms in the PWC government buildings. The meeting minutes from January through October were posted on the website before the December meeting.

Declaration and Bylaws

The Dawson Landing HOA Declaration and Bylaws are posted on www.dawsonlanding.com. The board abides by these and other VA statutes including the VA Property Owners Association Act. Although the Declaration and Bylaws are well defined, these governing documents do not restrict anyone from being elected to the board of directors. Nor do these restrict residential businesses from operating in our community. Recent changes in both our state and county statutes define a "family day home" as a residential business.

Access to Legal Counsel

The board cannot disclose any information provided by legal counsel to the members that would breach the attorney-client privilege simply because this may create other problems for the Association. The board was elected to make decisions on behalf of the membership. However, anyone may send inquires directly to the Association's counsel at their own expense.

Proposed Settlement

The board of directors has a fiduciary duty to act in the best interests of the Association. Everything discussed at a board meeting is not appropriate for publication to the community. Even though members have the opportunity to participate in the monthly board meetings, divulging matters with those who were not present for the discussion and/or knowledgeable about the background is rarely productive and can be harmful. Folks operating with half the facts generally can't contribute much to a solution.

The HOA's attorney has advised that the board can not disclose any terms of the proposed settlement with anyone. However, the new Trash and Exterior Maintenance Policy extends many of the same conditions to all homeowners and is posted under "Documents" on the website.

For these reasons, the board will maintain confidentiality and refrain from providing any additional information concerning the proposed settlement.

Financial Reports

The current financial information on the income statement and balance sheet is reported at the biannual meetings and the monthly board meetings. Both our legal counsel and management company have advised against placing any of the HOA's financial information on the web site since it is not secured by sign-on/password. Members may submit inquiries about the Association's finances by submitting a written request to the Treasurer at P.O. Box 4401, Woodbridge, VA 22194.

Our household will not be able to attend as we will still be out of state. However we do have a few questions we would like to have added to the agenda/homeowner Q&A and responses provided in the meeting minutes.

1. Why are there no meeting minutes after July 2016 on our website?

2. Where in our covenants does it support 2 members from the same household be on the Board.

3. Since the HOA members were not privy to the reasons for, and the terms of, the "home-based business settlement" (aka the home-based childcare center that is strictly against the CCRs), can the HOA be provided with the following information from the law firm (not the Board) funded by our HOA fees:

A. Was there any review of County records completed about this "home-based business" regarding its operation in our community and in its previous community? If not, why not? If so, please explain the findings and the rationale for approval in light of the findings.

B. Was there any discussion as to how many Dawson Landing families are served by this "home-based business" compared to how many families outside of the Dawson Landing community? What is that comparison?

C. In the event something happens to any of the children who are served by the "home-based business" can the HOA, as an entity, be held liable? And by liable I mean, put in a position where monetary compensation would be due from the HOA since it has approved the continued operation of the business in spite of the CCRs which every homeowner is required to abide by?

D. Does the HOA, as an entity, have to hold reserves (i.e. Money) aside, or in the future, assess each household a fee, in the event something happens to any of the children who are served by the "home-based business" since the HOA has approved the continued operation of this "home-based business" in spite of the CCRs that every homeowner is required to abide by?

D.1 Will our bi-annual fees increase if such a reserve is required?

E. By being members of the Dawson Landing HOA, is each household now personally liable in the event something happens to any of the children who are served by the "home-based business"? By liable, I mean, would each household be responsible for some type of monetary pay-out since the HOA has approved the continued operation of this "home-based business" in spite of the CCRs that every homeowner is required to abide by?

F. How does this ruling/settlement impact our CCRs in terms of other, potential "home-based businesses? Has the settlement set a precedent that in effect, invalidates our CCRs?

G. Will a copy of a current budget be provided at the December meeting be provided as well as an explanation of all expenditures to date?

Please do not say there is insufficient time at the bi-annual meeting to discuss this. The settlement was completed without the knowledge of the community and we deserve to be informed about the ramifications.

Please do not say there is insufficient time for our lawyers to respond. There is. Their fees make up the majority of the HOAs expenditures so we should expect a quick response.

Please do not say this should be one-on-one discussion. It should not as it has the potential to detrimentally impact each and every household.

Thank you. Sent from my iPad

From the Professional Association Community Management Blog

The Top 10 Benefits of Living in a Well-Managed HOA

10. **Well-maintained amenities** – HOAs typically do an outstanding job of maintaining amenities. (Think manicured and over-seeded common area lawns, freshly painted walls, lighting that works and clean play areas, to name just a few)
9. **Increased amenities** – Not just well-maintained amenities, but lots of them, too, which may include walking trails, sport courts, swimming pools, barbecue pits and neighborhood parks
8. **Aesthetically pleasing homes** – Just take a drive through your community and you'll see
7. **Rules and regulations deter nuisance activity and promote conformity** – Beauty is not just in the eye of the beholder
6. **Added layer of support in dealing with neighborhood property issues** - HOAs often partner with municipal code compliance departments to ensure adherence to the rules
5. **Community bonding and communication among neighbors** – A great way to make new friends
4. **Increased community pride** – Who wouldn't be proud to live in an attractive, well-run community
3. **Financial stability** – A well-managed HOA has a reserve study in place and funds available for future common area repairs and capital improvements, thereby reducing the likelihood of special assessments down the road
2. **TLC** – Community common areas are cared for by trained professionals
1. **Properly protected property values.**

Budget Smarter

Tips for ensuring that the budget is comprehensive and as accurate as possible. It is critical to review the time line for budget completion and approval by the Board so that distribution requirements set forth in the HOA's governing documents can be met. While keeping these critical deadlines in mind, consider the following items to help make the budget preparation process successful:

1. Review the reserve study to determine how much money the association should have set aside for replacement costs and other contingencies. Determine the percentage funded in reserve. Make sure you have planned for adequate cash flow for upcoming expenditures. Compare recommended funding in the reserve fund to the current level of actual funding to also determine if an assessment increase is needed.
2. Analyze expenditures for the current year and pinpoint assets that may need to be replaced or upgraded in the coming year.
3. Examine each line item to account for increased costs.
4. Divide the total among homeowners to determine whether an assessment increase will be necessary to cover costs.
5. Review governing documents for specific requirements and recent changes to State Statutes.
6. Include a narrative explanation of how each income and expense item was determined.
7. Be sure to prepare both an operating budget and a reserve budget for 2015. Include the final budgets as agenda items for approval during an open Board of Directors meeting

Fiduciary Duty: 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 (e.g., trustee, guardian). -Black's Law Dictionary

Because board members are entrusted with the money and property of the association they are held to a higher standard and must avoid conflicts of interest. They are deemed "fiduciaries" and have a duty to act in the best interests of the membership.

A homeowners association has a fiduciary relationship with its members. (Cohen v. Kite Hill.)

It is well settled that directors of nonprofit corporations are fiduciaries. (Raven's Cove v. Knuppe.)

Directors of nonprofit corporations such as the Association are fiduciaries who are required to exercise their powers in accordance with the duties imposed by the Corporations Code. This fiduciary relationship is governed by the statutory standard that requires directors to exercise due care and undivided loyalty for the interests of the corporation. (Francis T. v. Village Green.)

Two Broad Duties. Upon their election to the board of a common interest development, directors become fiduciaries with powers to act on behalf of the association. As fiduciaries, directors are held to a higher standard of conduct and have two primary duties: (i) duty of care, and (ii) duty of loyalty. This applies to directors of both incorporated and unincorporated associations.

A. **DUTY OF CARE** (Due Diligence; Duty to Investigate). Directors must be diligent and careful in performing the duties they have undertaken. (Burt v. Irvine Company.) Directors must:

1. Attend and participate in meetings so they can be informed about the association's business.
2. Make reasonable inquiry re maintenance issues, rules violations, etc.
3. Make decisions.
4. Keep corporate records.
5. Enforce the governing documents.

B. **DUTY OF LOYALTY** (No Self-Dealing). Directors must act in the best interests of the association even if at the expense of their own interests. This is more than just embezzlement of funds; it includes steering contracts to family members or taking actions that result in personal benefits to the director at the expense of the association. Violation could result in (i) liability for all profits received, (ii) all damages caused by the breach, and (iii) punitive damages.

"We note that the duty of undivided loyalty applies when the board of directors of the association considers maintenance and repair contracts, the operating budget, creation of reserve and operating accounts, etc. Thus, . . . [directors] may not make decisions for the association that benefit their own interests at the expense of the association and its members." (Raven's Cove v. Knuppe.)

The duty of loyalty can extend to the support of board decisions.

Business Judgment. In determining whether directors violated their fiduciary duties, courts will use the Business Judgment Rule. To avoid potential breaches, boards should adopt an ethics policy to guide directors.

Personal Liability. As volunteers, directors are protected from personal liability through the governing documents and various laws provided they meet certain standards. See "Protections Against Liability."

Statute of Limitations. The statute of limitations for an action against an association or board member for breach of fiduciary duties is three (3) years from the discovery of the wrongful act. (Smith v. Superior Court.)