Board of Directors Boot Camp

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Kerry Bartell, Host

Kerry Bartell is a principal with the law firm of Kovitz Shifrin Nesbit and has been practicing with the firm for over 16 years. She concentrates in Common Interest Community Association (condominium, townhome, homeowner, Master) law.

Kerry's expertise includes providing guidance on general matters relating to associations, as well as counseling the board of directors for an association on corporate actions, contracts, dispute resolution and other issues relating to the association as a corporation.

Kerry conducts seminars and webinars on community association law for homeowners, property managers and community associations in the Chicagoland area. She is a frequent speaker at industry tradeshows and has written numerous articles for the Chicago Tribune, Common Interest, and The Chicagoland Cooperator.
Board Boot Camp: Roles & Responsibilities
Now What Do We Do?

Presented by KSN Attorney
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I. Introduction - Why Is This Important?

A. How To Operate Legally
B. How To Operate Efficiently
C. How To Operate Without Undue Personal Liability Exposure - Delegation And Use Of Professionals
D. Owners Involvement Is Key
II. Establishment Of The Condominium

A. Governing Documents
   1. Declaration
   2. By-Laws
   3. Articles Of Incorporation

B. Governing Law
   1. Condominium Property Act
   2. General Not For Profit Corporation Act
A. Administration Of Association - Board Of Directors
   1. Election of Directors
   2. Qualifications of Candidates For The Board
   3. Removal

B. Role Of Board Members
   1. Management of The Association
   2. Financial Obligations
   3. Property Value
   4. Safety
III. Association Operations (cont’d)

C. Role Of Board Officers

1. Election From Among The Board
2. President
3. Secretary
4. Treasurer
5. Vice-President
D. Meetings

1. Board Meetings
   a. Notice - 48 Hours
   b. Majority Quorum
   c. Approval By Majority Of Quorum
   d. One Vote Per Board Member
   e. Board Members Can Not Vote By Proxy
   f. Special Meeting Called By President Or 1/3 Of Board
   g. Minimum 4 Meetings Per Year
III. Association Operations (cont’d)

D. Meetings (cont’d)

h. Closed
   i. Litigation
   ii. Assessment collection
   iii. Violations
   iv. Employment/dismissal – employee, independent contractor, agent/provider of goods or services
   v. Meet with counsel
2. Unit Owner Meetings
   a. Purpose
      i. Annual Meeting
      ii. Budget/Assessment - Regular/Special
      iii. Amendments to Declaration
   b. Notice
      i. Mail Or Delivery To All Unit Owners; Posted If A Common Entranceway Or Mailroom
      ii. Electronic Notice
      iii. Min. 10, Max 30 Days in Advance Stating Place, Date, Time and Purpose
III. Association Operations (cont’d)

2. Unit Owner Meetings (cont’d)
   c. Chaired by President
   d. Quorum – 20% For Associations With 20 or More Units
   e. Proxy Vote Allowed: Signature, Date, Time Limit

3. Role of the Owners
   a. Open Meeting Requirement Means All Owners Have A Right To Attend Meetings
   b. Owners Have A Right To Listen, Not Participate
   c. Information Is Key
IV. Fiduciary Duty of Board Members

A. Origin
   1. Condominium Property Act
   2. Common Law

B. Duty Of Care (Reasonable Prudence)
   1. Reasonable Investigation Of Problems/Issues
   2. Reasonable Response Based Upon Appropriate Deliberation
IV. Fiduciary Duty of Board Members (cont’d)

B. Duty Of Care (Reasonable Prudence) (cont’d)

3. Use Of/Assemble Professional Team Of Advisors - Delegation
   a. Property Manager
   b. Attorney
   c. Accountant
   d. Banker
   e. Insurance Agent/Broker
   f. Engineer And Architects
   g. Proof Of Insurance
IV. Fiduciary Duty of Board Members (cont’d)

B. Duty Of Care (Reasonable Prudence) (cont’d)

4. Keyed To The Practicalities And Demands Of The Circumstances
   a. Significant Expenditure
   b. Significant Liability Risk

C. Duty Of Loyalty

1. Interest of the Association is Paramount
   a. Over Individual Preference
   b. Over Faction/Special Interest Group Preference

2. No Conflict Of Interest
   a. Monetary Or Non-Monetary
   b. Illinois General Not For Profit Corporation Act: Disclosure, Nonvoting, Objective Fairness
D. Review Of Board Decisions

1. Business Judgment Rule
   a. No Judicial Second-Guessing Of Decisions, Even If Things Don't Work Out As Hoped
   b. Focus On The Process, Not The Result

2. Reasonable - Evaluation Of Reasonableness Of Board Action

3. Board Has Broad Discretion, Even With Money
   a. Special Assessments Or Budget Increases – 25 days
   b. Purchase Or Sale Of Property Or Units
   c. Appointments Of Vacant Positions
   d. Expenditure Limitations
IV. Fiduciary Duty of Board Members (cont’d)

E. Channels Of Communication And Chain Of Command
   1. Use Of Property Manager
   2. Owner Communication
V. Protection of Association Financial Assets

A. Establish Accurate Budget/Assessment/Special Assessment - Follow Proper Procedure
   i. Notice To Members
   ii. Adoption By Board

B. Collect Assessments/No Forbearance
   i. Remedies - Late Charge
   ii. Legal Action - Eviction
   iii. Policies

C. Reserves

D. Proper Approval Of Expenditures
   i. At Meeting
   ii. Owner Approval Required?

E. Periodic Audit
VI. Protection of Association Property

A. Maintenance, Repair, And Replacement
   1. Reserve/Useful Life Study
   2. Maintenance Schedule
   3. Inspections
   4. Limited Common Element Issues
   5. Funding Alternatives

B. Contract Procedures
   1. Specification Development
   2. Bids?
   3. Approve Contract At Meeting-Attorney Review
   4. Supervision Of Work
VII. Rules

A. Rules Can Implement, Declaration/By-Laws, But Can Not Be Inconsistent Or Supersede Declaration/By-Laws

B. Enforcement
   1. Fines
   2. Notice
   3. Opportunity For a Hearing
VIII. Covenants & Rules Enforcement

A. Fines
   1. Notice
   2. Opportunity For a Hearing
   3. Levy Fine

B. Litigation
   1. Collection of Assessments
   2. Injunction
   3. Damages
Questions & Answers

Please submit questions through the Question Window on the right of your PC screen, or by tapping the 🎓 on your tablet or smartphone.
Thank you for participating in today’s training session! Materials from this webinar will be emailed to you shortly.

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