

HOA BOARDS





Is a Board Even Necessary?

- The Nonprofit Act (§ 16-6a-801(1)):“A nonprofit corporation shall have a board of directors.”
- The Community Association Act (§ 57-8a-502(3)):“Upon termination of the period of administrative control, the lot owners shall elect a board...”
- The Condominium Ownership Act: ???


Delegating Board Authority

§ 16-6a-801(2)(b): A nonprofit's articles of incorporation "may authorize one or more persons to exercise some or all of the powers that would otherwise be exercised by the board of directors." If an HOA exercises this option to any degree, "...the directors shall be relieved to that extent from such authority and duty."

Composition of Board

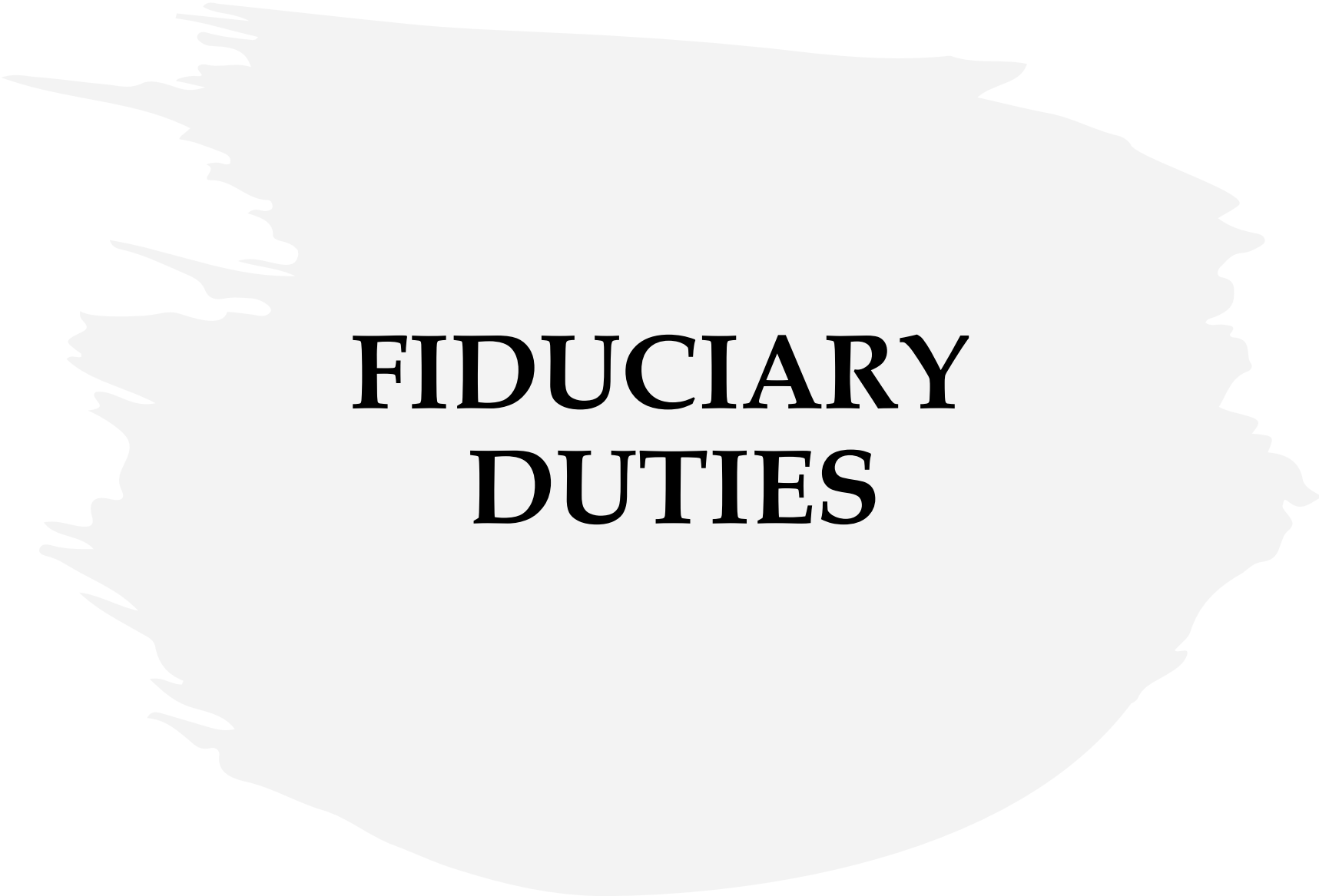
The Nonprofit Act and the Community Association Act each require a Board to consist of at least 3 people.





What Does the Board Do?

- Condo Act: Except as limited in the declaration, the association of unit owners bylaws or articles of incorporation, or other provisions of this chapter, a management committee acts in all instances on behalf of the association of unit owners.
- Community Association Act: Except as limited in a declaration, the association bylaws, or other provisions of this chapter, a board acts in all instances on behalf of the association.



FIDUCIARY DUTIES



What is a Fiduciary?

A person to whom property or power is entrusted for the benefit of another.

Utah Code

§ 16-6a-822

- Standard of Conduct
 - a board member is obligated to discharge his or her duties “(a) in good faith; (b) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (c) in a manner the director or officer reasonably believes to be in the best interests of the nonprofit corporation.”
- Reliance on Third Parties
 - in undertaking these duties, the Nonprofit Act entitles board members to rely on information, opinions, reports, statements, and data presented by: (a) agents of the HOA that the board member reasonably believes to be reliable and competent in the matters presented; (b) attorneys, CPAs, and other persons the board member reasonably believes to have expertise or competence on the matter at hand; and (c) HOA committees that the board member is not a member of but reasonably believes merit confidence
- Director or Officer is only liable for breaches of the above duties in cases of
 - Willful misconduct;
 - Intentional infliction of harm on the HOA or its members; or
 - gross negligence

Where there's a duty, there is
liability...


- Failure to Maintain and Repair Common Property
- Failure to Adequately Fund Reserves
- Improper Budget Management
- Failure to Collect Assessments
- Negligent Hiring and Supervision
- Selective Enforcement or Non-enforcement of Governing Documents



Lawsuits Commonly faced by Directors



Fiduciary Duties of Declarant “Boards”

A close-up photograph of a hand in a black suit sleeve holding a wooden gavel. The gavel is positioned vertically, with the head resting on a wooden block. The background is blurred, showing a wooden surface.

Davencourt at Pilgrims Landing Homeowners Ass'n v. Davencourt at Pilgrims Landing, LC *2009 U.T. 65, 221 P.3d 234*

A Declarant's fiduciary duties to the HOA are:


- To use reasonable care and prudence in managing and maintaining the common property;
- To establish a sound fiscal basis for the association by imposing and collecting assessments and establishing reserves for the maintenance and replacement of common property;
- To disclose the amount by which the developer is providing or subsidizing services that the association is or will be obligated to provide;
- To maintain records and to account for the financial affairs of the association from its inception;
- To comply with and enforce the terms of the governing documents, including design controls, land-use restrictions, and the payment of assessments;
- To disclose all material facts and circumstances affecting the condition of the property that the association is responsible for maintaining; and
- To disclose all material facts and circumstances affecting the financial condition of the association, including the interest of the developer and the developer's affiliates in any contract, lease, or other agreement entered into by the association

Board Meetings



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MEETING IN PROGRESS



A “meeting” is a gathering of a Board, whether in person or by means of electronic communication, at which the Board can take binding action.



Open Meeting Provisions

48-Hour Notice Requirement

Homeowners must be given reasonable opportunity to offer comments

Penalties for non-compliance include \$500 plus attorney's fees and/or actual damages

Declarant Exception



Closed Session Exceptions

- Consult with attorney for legal advice
- Discuss ongoing or potential legal proceedings
- Discuss a personnel matter
- Discuss contract matters (including bids)
- Discuss a sensitive or private matter
- Discuss delinquent dues and fines

Taking Action Without a Meeting

Utah Code §16-6a-813

- Action can be taken without a meeting if all members of the board consent to the action in writing **or fail to object**.
- A board member must send a notice that states:
 - The action to be taken;
 - The time by which board members must respond to the notice;
 - That failure to respond by the deadline will have the same effect as abstaining from the vote and failing to demand that the action not be taken without a meeting.
- The same voting thresholds apply
- Votes can be changed before the notice deadline to respond
- A single board member can stop the action without a meeting by demanding in writing, by the deadline, that the action not be taken without a meeting.

