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WHAT'S MY DUTY? HOA LAW REGARDING THE DUTIES OWED TO THE HOA BY BOARD MEMBERS, MANAGERS AND VENDORS.

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This document is intended to provide general information. It does not and cannot provide specific legal advice. For additional information or answers to questions, you may contact Augustus H. Shaw IV, Esq. of Shaw & Lines, LLC at 480-456-1500 or send questions to ashaw@shawlines.com.

This course is approved by Community Association Managers International Certification Board (CAMICB) to fulfill continuing education requirements for the CMCA® certification. www.Camicb.org.


Syllabus

Learning Objectives:

This seminar will discuss the various duties management, vendors and board members owe to the Homeowners Association. This seminar will also discuss recent legal trends regarding how these duties are breached and the consequences of a breach of duty.

- I. INTRODUCTION.**
- II. THE ROLE OF HOA BOARD OF DIRECTORS.**
- III. THE ROLE OF HOA MANAGEMENT.**
- IV. MANAGER'S DUTY IS BASED ON CONTRACT.**
- V. BOARD MEMBER FIDUCIARY DUTY.**
- VI. THE ROLE OF HOA VENDORS.**
- VII. PROPER RELATIONSHIP BETWEEN
THE BOARD OF DIRECTORS AND THE OWNERS.**
- VIII. PROPER RELATIONSHIP BETWEEN
THE BOARD OF DIRECTORS AND THE MANAGER.**
- IX. PROPER RELATIONSHIP BETWEEN
THE BOARD OF DIRECTORS AND VENDORS.**
- X. CONCLUSION.**

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THE HOA "PLAYERS"

- The Board of Directors.
- The Manager.
- Association Vendors




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The Role of HOA Board of Directors

- Enforce the Restrictive Covenants.
- Protect the Common Property of the Association.
- Collecting Assessments.
- Building a Sense of Community.



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The Role of HOA Board of Directors

Create policies and procedures regarding governance of the HOA.

Hire and monitor the Manager, HOA Employees and Vendors.

Decide how Association funds are to be spend.



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Board Member Fiduciary Duty

- Board Members have a **Duty of Care** to the Association.
- Board Members also have a **Duty of Loyalty** to the Association.
- Board members may be held personally liable for any damage caused to the Association as a result of a breach of the "fiduciary" duty.



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The Role of HOA Management

Act as a liaison for Owners.

Implement the Policies of the Board of Directors.

Supervise HOA Employees and Vendors.



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The Role of HOA Management

Enforce the Restrictive Covenants, Rules and Regulations as instructed by the Board of Directors through policies.

Collect Assessments as instructed by the Board of Directors through policies.



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Manager's Duty is based on Contract

- The manager's duty to the Association is based on the provisions of the Management Contract.
- Managers must act in good faith and deal fairly with the HOA.
- A breach of the implied covenant of good faith and fair dealing "may provide the basis for imposing damages." *Wells Fargo Bank*, 201 Ariz, at 491, ¶ 60, 38 P.3d at 29.



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The Role of HOA Vendors

Perform tasks as requested by the Board of Directors.

Take direction from management regarding how to accomplish tasks requested by the Board of Directors.



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What is the Proper Relationship Between the Board of Directors and the Owners

Owners may influence Board Members but not override them.

The Board should listen to Owners but make independent judgments.

Board Members and Owners should act civilly toward each other.



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What is the Proper Relationship Between the Board of Directors and the Manager

•The Board of Directors Creates Policies – the Manager Implements/ Enforces and Explains the Policies.

•The Manager is the CEO of the HOA.

•The Manager is the “boss” of all Association employees and vendors, not the Board or the Owners.



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What is the Proper Relationship Between the Owners and the Manager

•The Manager is the main point of contact for the Owners.

•The Manager does not work for the Owners; rather, the Manager works for the Board of Directors.

•The Manager cannot make decisions without Board approval.



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What is the Proper Relationship Between the Board of Directors and Vendors

The Board should decide what services the vendor is to perform.

The Board should not interfere or directly supervise vendors. This is the job of management.

If there is an issue between the Board and a vendor, the Board should discuss the issue with management.



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What is the Proper Relationship Between the Management and Vendors

Management should supervise vendors.

Management acts as a liaison between the Board of Directors and vendors.

Management acts as a liaison between owners and vendors.



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Sharks! Lawyers Looking to Sue HOAs For Breach of Duty

- More Law Firms Are Representing Owners.
- Attorneys Are Actively Looking to Sue HOAs and Their Management Companies.
- Some lawyers are taking cases on a "deferred" or "contingent" basis.



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Questions?

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