



Responsibilities of the President and Vice President

MULCAHY Community Association Cheat Sheet®

BRINGING ANSWERS
TO COMMUNITY
ASSOCIATIONS

This publication discusses significant points of law as they apply to community associations and is not intended to offer specific legal advice or responses to individual circumstances or problems.

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THE COMMUNITY ASSOCIATION PRESIDENT - AN OVERVIEW

There are thousands of community associations across Arizona and every one of them, run by volunteers is viewed by the courts, the IRS and vendors as a business enterprise. Their primary purpose is the maintenance, protection, preservation and enhancement of the community's assets that can be valued in the millions of dollars. At the head of this business enterprise is the CEO, the board president. The president provides leadership and in conjunction with the board of directors is responsible for carrying out the duties of the association as required by statute and the association's governing documents, and serves as the official spokesperson for the board and the association.

PRESIDENTIAL POWER

The bylaws will typically outline the powers and duties of the president. The president presides at all meetings of the board and membership. He/she assumes responsibility for the day-to-day administration of the association and typically has the authority to execute legal documents and to order specific actions in furtherance of association policies. The ultimate responsibility for the association is with the board of directors—guided by the president. *The president does not have the authority to do anything beyond the approval of the association's board of directors.*

GOVERNING DOCUMENTS

The president must be familiar with the governing documents of the association.

CC&Rs create the association and the enforceable scheme of covenants and restrictions that run with the property.

Articles of Incorporation establish the association as a legal entity and are filed with the Arizona Corporation Commission.

Bylaws establish the procedures for the internal government and operation of the association. They are the operating guide for the association, not the property.

Rules and Regulations cover specific matters related to the use of the property that are not covered in the CC&Rs. The Rules and Regulations cannot conflict with the CC&Rs or they are unenforceable.

Architectural Guidelines are typically established pursuant to the association's rule making authority and preserve the "vision" of the community.

Arizona Revised Statutes:

Title: 10 Corporations and Associations

Chapter: 24 General Provisions – Non Profit

Corporations, A.R.S. Sections 10-3101 - 10-11909

Title: 33 Property

Chapter: 9 Condominiums, A.R.S. Sections 33-1201 - 33-1270

Chapter: 16 Planned Communities, A.R.S. Sections 33-1801 - 33-1818

FIDUCIARY DUTIES AND PROCEDURES

A fiduciary is one who holds something in trust for another. The duty of a fiduciary is to a duty of care and a duty of loyalty.

The Duty of Care:

Directors must make an honest effort to make an informed decision with respect to each issue that comes before the board of directors; understanding the issues and options brought before the board. If necessary, request the advice of competent experts or practitioners and listen to them.

The Duty of Loyalty:

Directors must refrain from taking actions that will benefit them or parties related to them to the detriment of the association.

Duty of Confidentiality:

In exercising the duty of confidentiality, directors acknowledge that information that may come into their possession as a board member has proprietary, confidential or privileged status, whether the information is communicated in verbal or written form. I agree to maintain the confidentiality of all information provided to me and agree not to disclose proprietary, confidential or privileged information to anyone outside the board without the prior written authority or approval of the entire board of directors.

Procedures:

As a business, an association must follow formalities and procedures in connection with its operation. Reporting, meetings, notice and voting as set forth in the governing documents must be followed because failure to do so may affect the legal status of the association and can create a liability, allowing exposure for a lawsuit.

PRESIDENTIAL RESPONSIBILITIES

Annual Meeting of the Members: Must be held at least once a year and properly noticed to the membership as provided in the governing documents.

Board Meetings: Community associations should hold board meetings at regular intervals to transact business.

Planning the Board Packet: The packet is planned in conjunction with the management company, if one exists.

Open Meetings - Arizona Open Meeting Law: A.R.S. 33-1804 / Condo A.R.S. 33-1248 In addition to other requirements, all meetings of the association and the board are open to all members of the association (or a designated representative) and members shall be permitted to speak. Further, associations must give 48 hours notice to the membership of a board meeting.

Closed Meetings: Board meetings may be closed to regular members only for the following reasons: 1) Employment or personnel matters; 2) Legal advice from an attorney for the board or association; 3) Pending or contemplated litigation; 4) Matters relating to employee job performance, compensation, health records or complaints; and 5) discussion of a unit/lot owner's appeal of any violation cited or penalty imposed by the association, unless the owner specifically requests that the issue be discussed in open meeting.

Emergency Meetings: Are called only for emergencies. Only emergency subjects can be discussed. The reasons for the emergency meeting must be included in the meeting minutes and the meeting minutes must be read and approved at the next regular board meeting;

Conducting the Board Meeting: The president is responsible for determining if a quorum is met and conducts a proper and efficient board meeting by having a working knowledge of the agenda items and following the agenda.

Know the Basics of Parliamentary Procedure: Unless the bylaws specify otherwise, the board meeting does not need to be conducted in accordance with Roberts Rules of Order. However, it is wise to adopt some form of procedural rules.

Presidential Voting: Rules of Parliamentary procedure call for the chair to relinquish his position should he want to speak on a motion. Additionally, the president does not have a vote unless there is a tie. Some associations follow this procedure; however there is no legal requirement to do so unless a policy is set forth in the governing documents.

Annual Audit: A.R.S. 33-1810 / Condo A.R.S. 33-1243 requires an annual audit, compilation or review once a year.

Financials: The president is responsible for the association's fiscal well-being, including directing the budget process, collection of assessments, ensuring that reserves are adequately funded and that insurance coverage is sufficient to protect the board of directors and the association.

Arizona Corporation Commission Annual Report: Form should be completed, filed and fees paid every year.

Access to Books and Records: A.R.S. 33-1805 / Condo A.R.S. 33-1258. All records of the association shall be made reasonably available to the members of the association with some exceptions.

Enforcement: Boards have a duty to enforce rules and regulations in a fair, evenhanded and consistent manner.

Records: Must be kept and maintained appropriately.

Committees: Committees are appointed by the president or as provided in the governing documents.

Taxes: State and federal taxes must be paid annually by the association.

TIPS FOR THE PRESIDENT

- The president must set the example and follow all governing documents and rules and regulations.
- You cannot do it all. You are the leader and guide, but you must accept responsibility for getting things done. You have been elected to execute decisions made by the board and to hold yourself and association members accountable to the provisions in the governing documents. Work together with the board to accomplish the goals and delegate responsibilities.
- You cannot know it all. Use thoughtful planning and seek professional advice and practitioners when necessary; then listen to them. Additionally, look to your association documents for direction.
- Manage the association at the board meeting by following the Arizona Open Meeting law. Do not encourage association members to come to you for an executive decision. The board as a whole will come to better decisions. Remember, the power to make management decisions and ultimate responsibility is with the board of directors – guided by the president. *The president does not have the authority to do anything beyond the approval of the board.*
- Be transparent with all matters, except those required by statute to be closed.
- Cooperation is essential to the success of the association.
- Be aware of the number of directors meeting outside the board meeting, too many can constitute a quorum.
- Use the steps of problem solving to work through issues: 1) Identify the problem; 2) Gather information; 3) Find solutions; 4) Evaluate the solutions; 5) Plan; and 6) Execute the plan.
- Educate and mentor new board members.
- Inform and educate the community through all medias.
- Learn to communicate effectively. Develop speaking skills, practice good listening skills and keep a positive attitude. Be brief, accurate and keep it simple when writing to owners.
- Encourage a social climate within the association through community events.
- A good leader guides and gives credit where credit is due saying, "Thank You" often.
- Present an attitude of friendliness, understanding, fairness and good will.
- Keep everyone working toward the goals and vision of the association by providing encouragement, involving everyone, stressing compromise and cooperation if necessary.
- Interact with your board of directors; have a basic idea of the role and expectations required of each board member.
- Encourage, work closely with and mentor the Vice President so that he/she can step into the position easily.

THE VICE PRESIDENT

The vice president performs some of the duties of the president in his/her absence and typically shares some of the duties of the president. Often the vice president is assigned as a liaison to committees, projects etc. The wise vice president will take the time necessary to watch and perfect his/her leadership skills should he/she want to move into the presidential position.