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CARPENTER HAZLEWOOD DELGADO & WOOD

E-NEWSLETTER

What Happens if No One Volunteers for the Board?

By Nikita Verma, Esq.

In these challenging times, we are asked what happens if no owner will volunteer to serve on the community's Board of Directors. For communities without willing volunteers, the prospects are grim. CC&Rs provide for a mandatory association that collects assessments and cares for the common area.

A functioning Board is necessary to guide the Association in these decisions and requirements. In many situations, professional management can reasonably and efficiently "run" the Association in the short term, a managing agent cannot continue to operate without a principal. Nor would it want to for liability purposes. Even if a management company "runs" the Association for a short period of time - a couple of months pending an election - the management company cannot make key business decisions, such as increasing regular assessments or entering into contracts with key vendors. As these types of decisions may only be made by directors, someone would need to step up and serve on the Board. Without Board decisions, the maintenance of the common areas of the Association, the property taxes, the liability insurance premiums, and other bills could not be paid. There would be no one making decisions about assessment collections. In all probability, home values and the general health of the community would deteriorate.

It is also important to note that although a director's term expires, he/she may be obligated to continue to carry out the duties of the Association. Pursuant to the Nonprofit Corporation Act, despite the expiration of a director's term, a director shall continue to hold office until a successor is elected, designated, or appointed or there is a decrease in the number of directors. A director who fails to serve on the Board without a successor taking office or without a decrease in the number of directors may be subject to liability as it may be inferred that said director has a continuing obligation to the Association. If a director's term has expired and he/she is no longer willing or able to serve on the Board, it is in said director's best interest to affirmatively resign in writing so that it is not inferred that he/she is still obligated to carry out the obligations of the Association.

Finally, faced without any prospects of Board volunteers, we have often counseled clients and their managing agents to send out a letter community wide. This letter would alert all owners to the need, but more importantly, cast a dark shadow over the future operation of the community. Ultimately, without direction and key decisions, an Association cannot properly fulfill its duties. Bills go unpaid. Maintenance is ignored. Necessary repairs or expenditures are missed. This letter would forecast a challenging future for the Association without someone to volunteer. In our experience, owners do respond to these letters and someone answers the call.

These indeed are challenging times and volunteerism is at historically low rates. The continuing challenge to find willing Board candidates and volunteers is a problem. But with good communication and a realistic understanding of the need, it is our experience that someone in the community will volunteer.



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