



Eagle Bend West Community Association, Inc.

In the greater Harbor Village community- a great place to live!

Board of Directors Duties and Ethics Guide

Duties of Directors

The Board of Directors of EBWCA is responsible for the management of the association. It may delegate management of certain activities to other persons or businesses, such as a property management service.

Each board member should review and be familiar with the HOA's governing documents, such as the bylaws, the articles of incorporation, the covenants, conditions, and restrictions (CC&Rs), and any day-to-day operating rules (Montana code and portions of the CCRs are attached hereto).

The board's responsibilities include such things as:

- Enforcing provisions of the EBWCA governing documents.
- Ensuring the payment of taxes and assessments that are, or could become, a lien on the common area.
- Contracting for insurance on behalf of the association.
- Contracting for goods or services for the common areas or for the association.
- Delegating powers to any committees, officers, or employees of the association as authorized by the governing documents.
- Preparing budgets and financial statements for the association.
- Formulating rules of operation for the common areas and facilities.
- Taking disciplinary actions against members of the association for rule violations consistent with governing documents.
- Following the CC&R's and the by laws in connection with board actions.

Categories of Board Member Legal Duties

Each board member must fulfill three specific core legal responsibilities.

1) DUTY OF CARE

The duty of care requires each board member to discharge his or her duties in good faith, and with the care that an ordinarily prudent person would exercise in a like

position and under similar circumstances. It requires board members to exercise care in all activities related to their role as board members and commits each person to participate in the work of the board.

This means:

- Attending meetings and actively participating
- Communicating with other board members and with community members with honesty and accuracy
- Disclosing all potentially relevant information to fellow board members
- Following through on assignments and supporting initiatives
- Preparing for meetings in advance
- Reviewing financial reports and other critical information regularly
- Exercising independent judgment
- Requesting information needed for decision making
- Complying with federal, state and local requirements
- Acting in good faith on all matters before the board
- Making no false statements of fact to the directors, staff or community members

2) DUTY OF LOYALTY

The duty of loyalty requires board members to act in the interests of the association rather than their own personal interests or the interests of some other person or organization. Duty of Loyalty is carried out by:

- Disclosing actual and potential conflicts to the board
- Avoiding all potential conflicts of interest
- Recusing oneself if a conflict arises
- Not using the organization for personal, social or financial gain
- Acting in the best interest of the whole community and not in one's personal interest
- Maintaining confidentiality of information held by the organization
- Protecting privileged and confidential information of the board and association
- Providing opportunities for residents to comment on decisions facing the association.
- Performing duties without bias for or against any individual or group of owners or non-owner residents
- Disclosing personal or professional relationships with any company or individual who has or is seeking to have a business relationship with the association
- Conducting open, fair and well-publicized elections

- Providing opportunities for residents to comment on decisions facing the association
- Always speak with one voice, supporting all duly adopted board decisions—even if the board member was in the minority regarding actions that may not have obtained unanimous consent.

When acting on behalf of the organization, each board member must put aside their personal and professional interests. All activities and decisions should be in the best interest of the organization, not in the best interest of the individual board member.

3) DUTY OF OBEDIENCE

The duty of obedience requires board members to make decisions in accordance with the mission of the organization, to uphold its bylaws and other policies and functions and to not act in a way that is inconsistent with the central goals of the board and association. Duty of Obedience is carried out by:

- Ensuring compliance with all reporting requirements
- Examining and complying with all legal and governing documents
- Making decisions within the scope of the mission and law
- Following and abiding by applicable law governing the association, its members and association property and facilities
- Not misrepresenting known facts in any issue involving association business.
- Keeping confidential and not divulging personal information about any association owner, resident or employee that was obtained in the performance of board duties
- Preventing, stopping and/or making personal attacks on colleagues, other directors, vendors, staff or residents
- Never harassing, threatening or attempting through any means to control or instill fear in any board member, owner, resident, employee or contractor
- Never revealing to any owner, resident or other third party the discussions, decisions and comments made at any meeting of the board properly closed or held in executive session.

The board should do everything in its power to reach organizational goals, but members still have an obligation to follow the organization's guidelines. These are found in the governance documents, and every board member has a legal responsibility to understand them.

General Standards For Directors Pursuant to Montana State Law

35-2-416. General standards for directors.

- (1) A director shall discharge the duties as a director, including the director's duties as a member of a committee:
 - (a) in good faith;
 - (b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and
 - (c) in a manner the director reasonably believes to be in the best interests of the corporation.
- (2) In discharging the duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
 - (a) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
 - (b) attorneys, public accountants, or other persons with regard to matters that the director reasonably believes are within the person's professional or expert competence;
 - (c) a committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence; or
 - (d) in the case of religious corporations, religious authorities, ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.
- (3) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.
- (4) A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director if the director acted in compliance with this section.
- (5) A director may not be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including but not limited to property that may be subject to restrictions imposed by the donor or transferor of the property.
- (6) This chapter does not modify any limitation of liability of directors provided by Title 27.

Director Conflict Of Interest

35-2-418. Director conflict of interest.

- (1) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair at the time it was entered into or is approved as provided in subsection (2) or (3).

(2) A transaction in which a director of a public benefit corporation or religious corporation has a conflict of interest may be approved:

(a) in advance by the vote of the board of directors or a committee of the board if:

(i) the material facts of the transaction and the director's interest are disclosed or known to the board or committee of the board; and

(ii) the directors approving the transaction in good faith reasonably believe that the transaction is fair to the corporation; or

(b) before or after it is consummated by obtaining approval of:

(i) the attorney general; or

(ii) a state district court in an action in which the attorney general is joined as a party.

(3) A transaction in which a director of a mutual benefit corporation has a conflict of interest may be approved if:

(a) the material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board and the board or committee of the board authorized, approved, or ratified the transaction; or

(b) the material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.

(4) For purposes of this section, a director of the corporation has an indirect interest in a transaction if:

(a) another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction; or

(b) another entity of which the director is a director, officer, or trustee is a party to the transaction.

(5) For purposes of subsections (2) and (3), a conflict of interest transaction is authorized, approved, or ratified, if it receives the affirmative vote of a majority of the directors on the board or on the committee who have no direct or indirect interest in the transaction. However, a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors on the board who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of or a vote cast by a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (2)(a) or (3)(a) if the transaction is otherwise approved as provided in subsection (2) or (3).

(6) For purposes of subsection (3)(b), a conflict of interest transaction is authorized, approved, or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction and votes cast by or voted under the control of an entity described in subsection (4)(a) may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection (3)(b). The vote of these members, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the voting power,

whether or not present, that is entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

(7) The articles, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions.

EBWCA CCR ARTICLE V

ORGANIZATION OF ASSOCIATION

Section I. Formation of Association. The Association is a nonprofit Montana corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and the Original Declaration and any amendments thereto. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with the Declaration, as amended.

Section 2. Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time. The Board shall consist of not less three no more than seven members. The Board may appoint various committees and appoint a Manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the Manager. The Board's responsibilities shall include, but shall not be limited to, the following:

- (a) administration, including administrative support as required for the Design Review Committee;
- (b) preparing and administering an operational budget;
- (c) establishing and administering an adequate reserve fund;
- (d) scheduling and conducting the annual meeting and other meetings of the Members;
- (e) collecting and enforcing assessments and all other covenants. The Board, through its officers may commence, take or defend any legal action in the name of the Association;
- (f) accounting functions and maintaining records;
- (g) promulgation and enforcement of the Eagle Bend West Subdivision Rules (but not the Design Guidelines);
- (h) maintenance of the Community Areas; and
- (i) all the other duties imposed upon the Board pursuant to the Declaration, the Bylaws, the Articles and the Eagle Bend West Subdivision Rules.

The Board shall not, however, be responsible for those duties and areas of operation specifically designated under the Declaration, the Articles, the Bylaws or the Eagle Bend West Subdivision Rules as the responsibility of the Design Review Committee.

Section 3. The Eagle Bend West Subdivision Rules. By a majority vote, the Board may, from time to time and subject to the provisions of the Declaration, adopt, amend and repeal rules and regulations to be known as the Eagle Bend West Subdivision Rules. The Eagle Bend West Subdivision Rules may restrict and govern the use of any area by any Owner or Resident; provided, however, that the Eagle Bend West Subdivision Rules shall not discriminate among Owners and shall not be inconsistent with the Declaration, the Articles or the Bylaws.

Section 4. Personal Liability. No member of the Board or of any committee of the Association (including but not limited to the Design Review Committee), no officer of the Association and no Manager or other employee of the Association shall be personally liable to any Member or to any other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the Manager, any representative or employee of the Association or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section 4 of Article V shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.