

**2019 Bay Area Property Services
Board Member Seminar**

The Common (and Not-So-Common) Courtesies of Community Living

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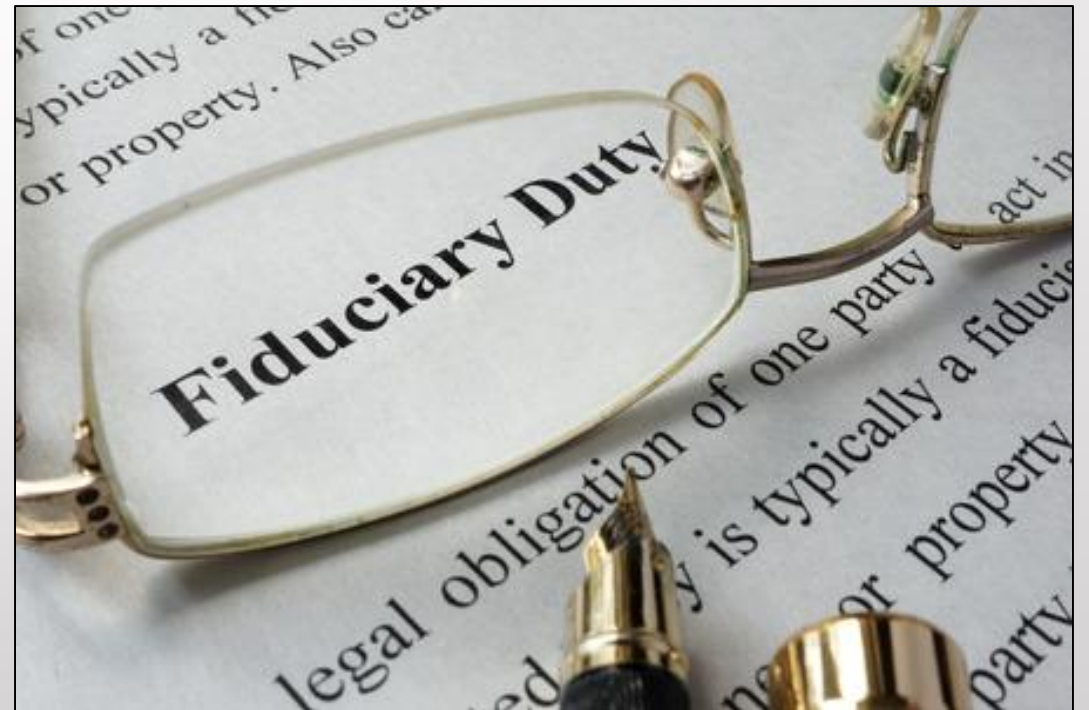
Evolution of Director Responsibilities

- **Primary Goal**
Preserve, protect and enhance property values
- **Fiduciary Duty**
Defines all board actions
- **Original Intent**
Care for property
- **Evolving Role**
Behavior modification



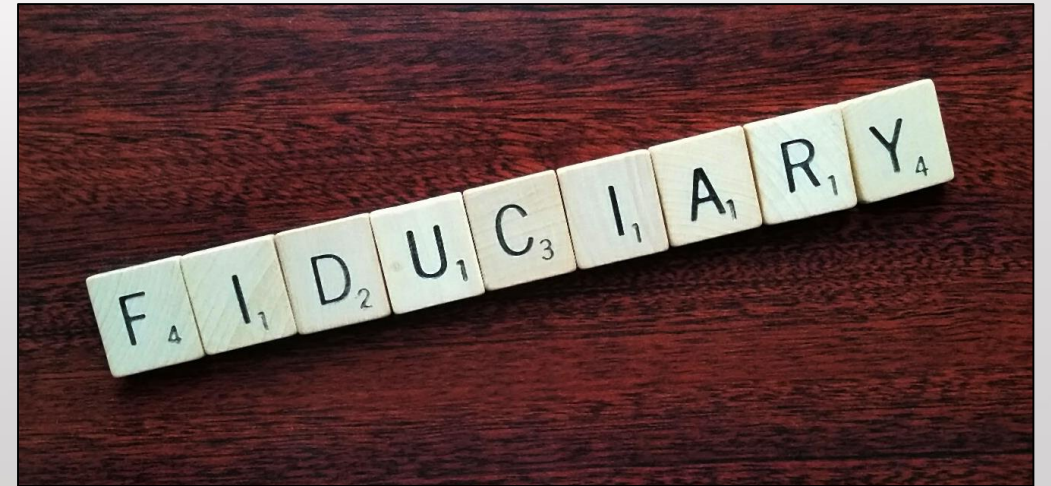
Fiduciary Duty of Directors

- What is it?
- Why is it important?
- How do you comply?



Fiduciary Duty Applies to All Director Actions

- **When** decisions are made
- **How** decisions are made – communications and deliberation process
- **Basis** of decisions made



Association Governance

- Elected Board of Directors
- Homeowner Members
- Committees
(at direction and discretion of the board)
- **Only board members**
have fiduciary duty to act beyond self-interest



What Is a Fiduciary?

- “Fiduciary” is a person to whom property or power is entrusted for the benefit of another
- Highest form of duty recognized by law

FIDUCI - WHAT?

Corp. Code Section 7231(a) Business Judgment Rule

Board Members Must Act:

- In **Good Faith**
- In the **Best Interest of Association**
- Only after **Reasonable Inquiry**
- In the Way an **Ordinary Prudent Person** Would Act under **Similar Circumstances**

Best Interests

- Best Interests of **Entire** Association
- No Privileged Groups or Individuals
- No Personal Gain or Benefit
- What is the Best or Correct Option?
 - Reasonable Minds Can Disagree



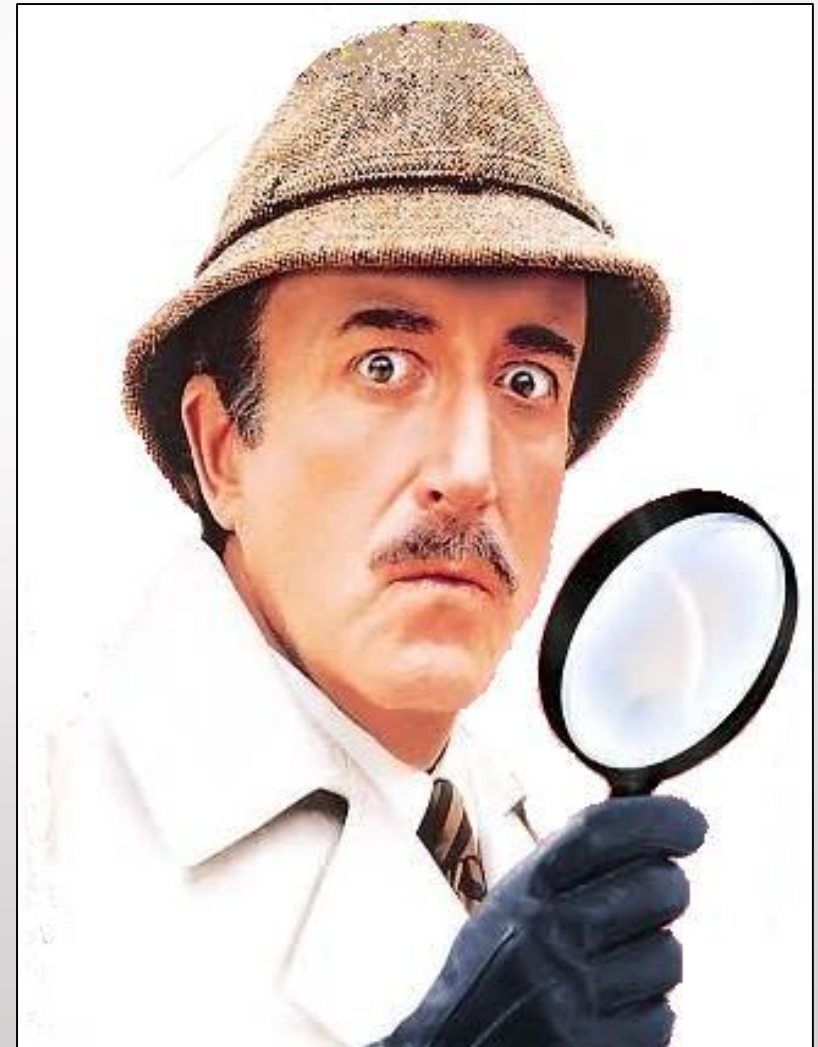
Priorities

- Life/Safety Protection
- Preserve Physical Plant
- Maintain Property Values
- Aesthetics & Community Standards
- Protect Against Liability Risk



What is “Reasonable Inquiry”?

- Duty to Investigate
- Duty to Make Informed Decisions



Board Difficulties

Some “Real World” Examples



Fiduciary Duty vs. Director Infighting

- Protecting Privileged/Confidential Information
- Maintaining Trust Among Directors
- Risks of Email Communications
- Political Posturing May Violate Fiduciary Duty



Presence and Behavior of Animals

- Pet Restrictions and Emotional Support Animals
- Privacy Considerations
 - What Can Board Ask/Require From Member
 - What Can Board Tell Other Members
- Animal Misbehavior – Nuisance – Applies to Emotional Support Animals Too



Neighbor-to-Neighbor Disputes Smoke/Odor Transfer

- Smoke/Odor Transfer Between Condominium Units
- Right to Privacy vs. Nuisance Condition
- Duty to Investigate
- Does Association Have Further Duty to Act?



Neighbor-to-Neighbor Disputes Sound Transfer

- CC&Rs May Prohibit Hard Surface Flooring
- Disability Issues – Allergies
- Normal Behavior vs. Nuisance
- Barking Dogs



Neighbor-to-Neighbor Disputes Harassment

- Must the Board Intervene When Residents Claim Harassment?
- Fair Housing Laws Apply
- Associations Are “Housing Providers”





Federal Fair Housing Act Liability for Harassment

- Fair Housing Act prohibits discrimination in the availability and enjoyment of housing and housing-related services, facilities and transactions on the basis of race, color, national origin, religion, sex, disability or familial status
- Residential community associations are considered to be “**housing providers**” for purposes of fair housing legal protection against unlawful discrimination

Federal Fair Housing Act Liability for Harassment

- Recent HUD Regulation: “A person/entity is **directly liable for failing to take prompt action** to correct and end a discriminatory housing practice **by a third-party**, where the person knew or should have known of the discriminatory conduct and **had the power to correct it**”

Federal Fair Housing Act Liability for Harassment

- In response to questions regarding **application of rule to community associations**, HUD responded:
 - “Community association generally has power to respond to third-party harassment by **imposing conditions authorized by CC&Rs or other legal authority**”
 - “Community associations regularly require residents to comply with CC&Rs and community rules through such mechanisms as **notices of violations, threats of fines, and fines**”
 - “The rule requires the community association to take whatever actions it legally can to end the harassing conduct”

Other Examples of Behavioral Difficulties

- Member Modification of Common Area
 - Landscaping
 - Decorations
 - Disability Access
- Member Interference with Association Vendors
- Surveillance Cameras vs. Privacy Rights
- Behavior of Committee Members



Takeaways

- Fiduciary Duty Applies to All Board Actions and Decisions
- Informed Decision-Making = Duty to Investigate
- Board Responsibility Extends Well Beyond Condition of Property
- Professional Community Manager is Your Most Valuable Resource
- Protect Against Personal Liability – Rely on Expert Advice



Questions?



Thank You!



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