

TO BE OR NOT TO BE AN EFFECTIVE BOARD MEMBER

WHAT DOES IT TAKE?

PRESENTED BY DEBORAH L. ROSS, ESQUIRE

ROSS EARLE & BONAN, P.A.

The law firm of Ross Earle & Bonan, P.A. is located in the Royal Palm Financial Center located at 759 S. Federal Highway, Suite 212, Stuart, Florida. The firm concentrates its practice in all aspects of community association representation and currently represents over 250 community associations on the Treasure Coast. It is with pleasure that the firm brings you this presentation.

To be or not to be an effective board member – what does it take? Is a question that anyone considering serving on a community association board of directors must ask themselves.

Serving on a community association board of directors is one of the toughest volunteer jobs around because it requires one to govern their neighbors and friends in a consistent, non-preferential manner, a task that is often much more easily said than done. The purpose of this presentation is to provide you with an overview of our observations of “what it takes” to be an effective board member – a board member that serves the community and still gets invited to the block party!

Time. In order to be an effective board member you must have enough time in your schedule to actively participate in both board meetings and ancillary board duties such as communicating with management; reviewing financials; soliciting bids and proposals from contractors; communicating with accounting and legal advisors; walking the property, etc. One who volunteers to serve on a board of directors without being willing and able to devote the time required to be a productive member of the board does the Board a disservice.

Thick Skin. In order to be an effective Board Member, one must have “thick skin”. Being a board member is often a thankless job. Residents often forget the members of the Board are usually volunteers who serve for free in an effort to assist in operating the community in accordance with its governing documents. Although most folks who live in a deed restricted community will tell you that they like to live in a community with common restrictions and rules that protect their property values, they often forget how much they like it when a restriction is being enforced or a debt is being collected from them. It takes a board member with thick skin to be able to enforce restrictions against his golf buddy.

Tact. Although one must have a thick skin to be an effective board member, one must remember that not every one has thick skin. Oftentimes, the complaints that I hear about board members is that they “talk down” to other members. As my mother used to say, sometimes it’s not what you say, but how you say it. Remember to always use honey before vinegar, and be cognizant of not creating a “them versus us” dynamic between the Board and the rest of the membership.

Ability to Delegate. The best board members that I have worked with over the years are master delegators. Although they devote a lot of time and energy to their board tasks, they understand that delegating some of the work not only prevents burn out, it results in members being more engaged in the operation of the community.

Knowledge of the Law. In order to be an effective board member, one must obtain a copy of and familiarize themselves with the Florida statutory law that governs their community, whether it is the Condominium Act (Chapter 718); the Cooperative Act (Chapter 719) or the Homeowners Association Act (Chapter 720). I am surprised how often I meet with new board members who are unaware of the fact that there is statutory law that applies to their association. The statutes are available online and may be downloaded for free at www.flsenate.gov/statutes. Additionally, condominiums are governed by the Florida Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums and Mobile Homes. This Division has published a body of arbitration decisions that are extremely instructive regarding how to handle certain matters which arise in condominiums. These cases can be found at the Division's website – www.myflorida.com/dbpr/lsc/arbitration.

Ability to “Forget” Laws from Other States. If I had a nickel for every board member who has started a sentence with “well in _____ (fill in the state of your choice) the law is “ – I would be able to stop saving for my 2 ½ year old's college education! Remember that the laws which govern deed restricted communities and their governing associations are in large measure statutory and vary considerably from state to state.

Knowledge of the Governing Documents of the Community and the Association. Most deed restricted communities which are governed an association have at least three (3) documents which dictate how the community and the association are operated. In order of priority, they are the Declaration of Restrictive Covenants (or Declaration of Condominium), the Articles of Incorporation of the Association and the Bylaws of the Association. Often, deed restricted communities will also be subject to Rules and Regulations and Architectural Criteria and Specifications. The documents provide the framework for operating the community and govern same to the extent that they do not conflict with the statutes that apply to the community. It is impossible to be an effective Board member without having copies of and a working knowledge of these documents. I am often surprised when I meet with a new association client and the Board is uncertain whether it has a complete set of governing documents of the Association. It is impossible for legal counsel to provide competent advice and for the board to make competent decisions without a complete set of governing documents. This is why we require all new clients to authorize the performance of a document search of the public records by a title company. The cost of such report ranges from \$75 to \$300, and is certainly money well spent.

Additionally, many community associations are members of a “master” association that acts as an umbrella association. In most cases, the governing documents of the master association impose certain obligations (such as architectural guidelines and use restrictions) upon the sub-

associations. The master association's documents are superior to the sub-associations. Therefore it is imperative that the Board is familiar with these documents as well.

Willingness to Ask for Professional Help. Especially in Florida, many communities and their boards are made up of retired residents. Many of these residents held high powered executive positions during the years that they worked and see it as a sign of weakness to ask for professional help. Too often, we see contracts signed by Boards only *after* they are signed and something goes astray. The accountants tell me that too often they are asked to provide input on financial matters only *after* someone complains that something has been handled incorrectly. Too often managers tell me that they are asked for input on budgeting, reserves and covenant enforcement only *after* the fact. In order to be an effective board member, one must be willing to ask for and follow the advice of professionals. Asking for such advice is not a sign of weakness, it is a sign of strength.

Ability to Conduct a Meeting. One of the most important tasks of a board is to conduct duly noticed, open, well run, organized board meetings. Board meetings must be noticed in accordance with the statute governing your association. Meetings should be conducted in accordance with an agenda in an orderly fashion. Board members must familiarize themselves with the members' right to speak at board meetings (the statutory provisions are different for condominium associations and homeowner associations) and they should establish a written procedure for conducting meetings (i.e. who can speak, when permission to speak must be requested, at what point in the meeting members will be permitted to speak and for how long) that is published to all members so everyone knows what to expect.

One of the most difficult tasks involved in conducting an association board meeting is taking good meeting minutes. Meeting minutes should not be narratives that reflect all conversation occurring at a meeting. Minutes should simply reflect the time, date and place of the meeting; proof of notice of the meeting; the presence of a quorum of the board; the presence or absence of each board member; the motions made (and by who) and seconded (and by who); the fact that discussion was had (but not necessarily the content of that discussion) and each board member's vote on each motion presented – *that's it!*

Knowing When to Say When. The best board members know when it is time to step aside and allow other members of the association to participate on the board. This time may come because there are many others who wish to serve on the board; it may come because the "mood" and philosophy of the community has changed; it may come because your spouse has threatened to move all of your association paperwork into the garage (or the dog house!); or it may come because you feel like you're ready to spend more time on the golf course, or with the grandkids, or fishing, or doing any of the other activities you intended to do when you retired! Keep in mind the advice given to rock stars and professional athletes – it's always better to go out on top!