

COMMUNITY ASSOCIATION GOVERNANCE GUIDELINES

Governing fairly, responsibly, and successfully should be the guiding principles for community association boards. How? Embrace the following guidelines. They'll help your association board increase harmony, reduce conflict, and build a stronger, more prosperous community.

In accordance with community governing documents and applicable laws and regulations, boards should:

CONDUCT REGULAR MEETINGS. Hold at least one membership meeting annually and regular board meetings as needed. Provide homeowners with appropriate notice and encourage involvement.

CONDUCT ELECTIONS. Hold fair and open elections that provide all candidates an equal opportunity to express their views. Associations should allow a representative from each candidate to observe the vote-counting process.

SET AN OPERATING BUDGET. Determine expenses for maintaining community common areas, facilities, equipment, and amenities, hiring professional partners, insuring the community's assets, and more.

PLAN FOR AND FUND RESERVES. Commission a reserve study when professional expertise is warranted and plan for anticipated long-term expenditures as part of the annual budget-development process.

COLLECT ASSESSMENTS. Levy and collect assessments and other fees from homeowners in a timely and equitable manner.

FULFILL FIDUCIARY DUTY. Act within the board's authority, exercise due care, act in good faith, and act with ordinary care in the best interests of the association.

GOVERN WITH TRANSPARENCY. Share critical information and rationale with residents about budgets, reserve funding, special assessments, and other issues that impact their financial obligations to the association. Give residents an opportunity to ask questions and engage in dialogue on these matters.

PROVIDE ACCESS TO RECORDS. Allow homeowners reasonable access to appropriate community records, including annual budgets and board meeting minutes.

DISCLOSE CONFLICTS OF INTEREST. Reveal all personal and financial conflicts before assuming a board position and, once on the board, before participating in any board decisions.

To learn more about how community associations are organized, governed, and managed, see CAI's *Community Association Living: An Essential Guide for Homeowner Leaders*, at www.caionline.org/CALiving.

GUIDING LIGHT

Board members should constantly follow their North Star: What is best for the community? The answer requires thoughtful problem-solving, persistence, creativity, and leadership.

By Steve Spanier

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WHAT DOES GOOD community association governance look like? How should board members perform their duties? What should their goals be? What input should members have? How does the ideal community operate?

These are some of the questions I have deeply considered and discussed with many residents while serving as a board president of Oakmont Village Association in Santa Rosa, Calif. The answers always come back to serving present and future residents, but perhaps not in the ways some might imagine.

BOARD BUSINESS

In California, the Davis-Stirling Act governs all homeowners associations in the state and takes precedence over a community's governing documents.

Also relevant is California Corporations Code 300, which specifies that corporations act through their boards. Many large communities, including Oakmont, are organized as corporations.

The code states that "... **the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the board.** The board may delegate the management of the day-to-day operation of the business of the corporation to a management company or other person provided that **the business and affairs of the corporation shall be managed and**

all corporate powers shall be exercised under the ultimate direction of the board." (Emphasis is mine.)

By stating (twice in the same paragraph!) that boards conduct the business of corporations, the preceding helps us understand the following guidance from Davis-Stirling.com (a website created to help explain the law): "Even though homeowners associations are quasi-governmental in nature, they are not pure democracies where members can vote on all issues. Instead, they are representative democracies where powers are delegated to elected representatives (the board of directors) and limited powers are reserved to the membership."

The site goes on to say: "Courts will defer to board decisions, even if the decisions are not the 'best' decisions, provided the board made a reasonable investigation and its decision was in good faith with the best interests of the association in mind (Business Judgment Rule)."

Further, boards have fiduciary responsibilities. As defined by Black's Law Dictionary, a fiduciary duty is "the duty to act for someone else's benefit, while subordinating one's personal interest to that of the other person. It is the highest standard of duty implied by law (e.g., trustee, guardian)."

FOLLOWING A NORTH STAR

As I interpret the Davis-Stirling Act, a board member's North Star is found in the answer to a simple



question: "What is best for the community?"

If board members focus on that, their jobs become relatively straightforward. They don't make decisions based on their own personal interests or the interests of their friends or neighbors. They don't make decisions based on what's least likely to create conflict or controversy. They don't make decisions based on what's expedient or easy.

Instead, they take whatever time is necessary to do whatever research and legwork are required. They listen to others and think critically about what they hear, asking questions to make sure they understand. They painstakingly pursue truth and mercilessly push away all that is not to find what they believe is best for the community. Then, they summon the courage to vote according to their findings and work hard to effectively execute projects that achieve the best for the community.

What is best for the community is different than what is best for the individuals who live in it. This is a curiously unintuitive statement, but I believe it stands up well to scrutiny.

If a community doesn't stay relevant, it gradually ceases to be an appealing place to live, negatively impacting both property values and resident satisfaction. Yet the challenge of keeping a community relevant may force board members to act in ways that are not always acceptable to individual residents.

For example, making a community safer from fires is a relatively uncontroversial goal; we are all negatively impacted when our communities burn. However, because fire prevention costs some residents money, the specific goal conflicts with the individual interests of some residents who perceive they can't afford fire-safety work. Because what is good for the community is not necessarily good for all its residents, virtually every major community decision will irritate some and delight others.

Individuals frequently act in their own self-interest. A fiduciary is not supposed to do that. If board members consistently act as fiduciaries after taking the time to learn about the issues, they will more consistently make decisions that further the best interests of the community. That's why I believe what is best for the community is a more appropriate goal than what is best for the individuals who live there.

By law, board members are the only community members who have the authority and fiduciary responsibility to ensure the community's long-term relevance and help protect association property values. The hired staff cannot do this because they

serve at the pleasure of the board and can therefore be guided inappropriately. Residents cannot do this because they are not fiduciaries and are therefore free to act according to their own self-interests.

If there will always be individual residents who will not like any important decision, how can board members know if their findings are really in the best interest of the community? And what pitfalls must they avoid as they research issues and attempt to arrive at conclusions?

FAILED STRATEGIES

Board members sometimes find it difficult to resist strong influences that attempt to draw them away from their North Star. I believe two incorrect strategies are most common.

Finger-in-the-air governance. Board members can fall into this trap by first determining which way the wind is blowing and then acting accordingly. Are a few friends complaining about something? Is there social media noise? Has someone written an impassioned letter to the newspaper or the board? It's easy to stick a finger in the air, determine the way the wind seems to be blowing, and act based on the exhortations of a small number of vocal individuals.

This approach, however, requires board members to weave an uneasy path through a minefield of dissent, always on the lookout for the next explosion. Not only is there no North Star, but wilderness wandering is expensive, inefficient, and frustrating for those whom board members serve.

Self-serving governance. Board members can fall into this trap by making decisions based on what they perceive is in their own best interests. They decide to run for office because they desire influence on the levers of power to serve themselves. They stay in office so long as the issue important to them is still active and quickly lose interest after it is decided.

This approach may be based on a specific issue, like whether to build a sports complex, or a more general goal, such as keeping assessments minimal. The important distinction is whether the board member believes strongly that their position is best for the community. We see self-serving governance when a board member's primary desire is something other than serving the community.

How can a resident spot these two flaws?

It's not always easy, particularly with self-serving governance. Sometimes, we can't determine a person's true motivation, but we can ask those who know the person and those who have worked closely with him or her.

Finger-in-the-air governance is a little easier to spot because it shows up in inconsistent action. Questions should be asked if there's an uproar over something and a board member soon afterward changes tune. Of course, a change of opinion can be reasonable and appropriate sometimes too.

EFFECTIVE DECISION-MAKING

How should a board member make decisions? Learn all necessary facts about every issue and seek out alternative perspectives with an open mind. Then, filter all this through the lens of what is best for the community and vote based on these conclusions.

That's why, just as board members shouldn't vote based on what their friends believe, they also shouldn't vote based solely on resident polls. Particularly in an era where social media permits the rapid spread of propaganda and outright falsehoods, what a board member thinks is right may not even be what the majority of current members think they want, but it might still be the best thing for the community.

That's the wisdom of the Davis-Stirling Act. Board members aren't encouraged to vote based on majority opinion; they're expected to vote based on their own (hopefully well-reasoned and researched) findings. They are elected because the community (presumably after carefully considering its options) concludes their character and opinions are trustworthy and their skills and experience are up to the task. Board members are elected to research, listen, think, and vote accordingly.

SIDE EFFECTS

The preceding strategy has two interesting side effects.

First, those who follow their North Star may seem impervious to community opinion.

Imagine the following situation. Perhaps encouraged to do so by a social media request, 100 people in a community of 4,730 express an identical opinion in a board meeting open forum. Should the fact that just over 2% of the community expressed a particular opinion sway the board members if those opinions aren't in harmony with their North Star?

Yes, it should, if that idea hasn't been considered and it is consequential to the decision at hand. If either one of these conditions is not present, the answer is no; nothing important has been added to the discussion.

A community's silent majority, who may think differently from the 100 people but don't wish to participate in the conflict, should not be

disenfranchised by the community's vocal minority. A community's future residents are similarly disenfranchised by finger-in-the-air governance and undue catering to vocal residents.

It's human nature to complain when you don't like something and to stay silent if you think all is well. California's Davis-Stirling Act helps protect silent majorities, both present and future, from the current vocal minority.

Here's a second, related side effect: When a board member appears impervious to community opinion, she or he may be accused of not listening to community input.

Sometimes, that's a fair accusation. After the 98th person has said essentially the same thing in essentially the same way, it's hard for even the most dedicated board member to remain interested. In this case, even a passionately stated perspective may seem to fall on deaf ears.

However, in my experience, the homeowner was actually heard and understood but because no new and useful arguments were presented, the board member was not pulled from the North Star.

HOMEOWNERS' RECOURSE

If the law provides board members with such power and authority, what can homeowners do when at least one board member doesn't vote the way they or most community members want? If boards have the responsibility for acting in the best interests of the community, but the community doesn't believe they are doing so, what is the community's recourse?

In California, Davis-Stirling provides that individual board members or entire boards can be recalled anytime. Homeowners may vote to recall a board member by submitting a valid petition signed by at least 5% of the membership. One board member, multiple members, or an entire board may be removed.

And, of course, the other recourse available to members is the ability to run for the board.

Homeowners who consistently complain they don't like what board members do but refuse to throw their own hat in the ring will never have their desired impact on community operations.

IDEAL OPERATIONS

What are the characteristics of a smoothly operating community? The answer should illustrate how much we have in common with our neighbors.

We all want to live in a safe community. We all want to live in a community relatively free from strife

and incivility. We all want to live in a community that is well-maintained and attractive. We all want to live in a community that runs efficiently, without unnecessary spending. We all want to live in a community that allows us to pursue our interests, whether that's playing a sport, watching a concert, attending a class, visiting with friends, practicing a faith, or just walking around.

Ideal communities are led by board members and staff members who perform as selfless servants. They work hard, listen well, consider completely, and act thoughtfully.

A HARD, BUT REWARDING PURSUIT

When a homeowner is elected to be a board member, she or he agrees to be bound by their state's relevant law and to perform as a fiduciary on behalf of all members. This is a serious responsibility.

Particularly in this age of social media, community association governance can be a difficult job in which board members are continuously attacked. I understand completely when people say they don't want to subject themselves to this. When most of us simply want to enjoy our lives, it's a rare person who commits to spending the time and energy required to take up the very serious mantle of responsibility necessary to succeed as a board member.

However, it's also extremely rewarding to serve others by constantly seeking a North Star that requires thoughtful problem-solving, persistence, creativity, and leadership to conceive and then achieve what is best for a community. If you love your community, serving as a board member truly is a labor of love.

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YES, YOU CAN (BE FLEXIBLE IN BOARD GOVERNANCE)

It can be a tall order to enforce your association's governing documents. Doing so in a way that promotes community spirit can be even harder, but you can find a way to be effective, flexible, and consistent.

By **Katie Anderson, CMCA, AMS, PCAM**

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COMMUNITY ASSOCIATIONS have rules, regulations, and architectural guidelines for good reasons. They provide certainty, order, and safety. They help communities protect and enhance property values. And if they're necessary and reasonable, they promote community harmony.

Regardless of size or shape, every community association should be striving to enforce their rules properly. The goal is simple for boards: Follow the rules and enforcement procedures detailed in your association governing documents. Yet conflicting views and misaligned expectations can create complications.

How can a board ensure practices are in place to help promote community spirit and enforce the

provisions? These can be conflicting jobs. How does a board do its job fairly without bringing personal agendas to the table and promote value within the community?

It's a tall order and a critical one.

When a community is inflexible and rigid in its approach to governance, owners won't like to live there, managers won't want to work there, and the community suffers. If your association lacks structure, and owners are frustrated because the board is too relaxed, the community also suffers.

If your association is too rigid or too flexible, your board can follow a few simple steps to ensure your governing process is effective, flexible, and consistent.

TRANSPARENCY

If the board is to be taken seriously, it needs to be inclusive and transparent. You should be holding open board meetings and annual elections, adding open forums to agendas for owner feedback, and being available and visible in the community. A few more ideas include:

- Set an annual calendar of board meetings and share dates with the community in January, giving owners enough time to plan to attend.
- Encourage and overcommunicate owner involvement in the voting process for the annual election. Email, call, post signs, and possibly send text messages.
- Start each board meeting with an open forum to allow for broad owner input.

CLEAR GUIDELINES

While a board doesn't always have control over the provisions in the covenants, conditions, and restrictions, and bylaws, the governance process typically requires the board to develop policies related to enforcement and fines. It is extremely important that these policies are clear about what happens when a violation exists—from communication steps, grace periods, and the process to request exceptions to what the owner needs to do to reach compliance. Every community should have these three enforcement policies:

Compliance and enforcement policy. This should include each step that will be taken by the community if a violation is identified. It should be clear on the grace period for each step.

Fine policy. Be concise about when fines will be imposed and the process for the owner to file an appeal.

Hearing policy. If an owner requests a hearing, how will that process be handled, and within what timeframe can the owner anticipate an answer?

COMMUNICATION

There are many forms of communication, and if you haven't already caught on, the key to most of these processes is flexibility. It is always hard to unravel situations when owners have been out of compliance for months, especially when they come to the board disputing fines and the association has sent letters, owners claim they were never received.

This situation can be debated from both sides. Sending a letter meets the requirements in most states for communication, but ask: If compliance is the goal, are there steps that can be taken to gain it quicker?

Imagine if a board member or manager in this case had picked up the phone or sent an email to follow up with the owner. Not only would it avoid the fines on the account, it would build a spirit that "we care" for your well-being. It instills trust between the association and the owner.

The moral of the story? Be flexible and broad with your communication. Don't be afraid to pick up the phone or send a text message. Different people require different forms of communication. Be dynamic in your approach. A few more communication tips include:

Kind language. The first communication an owner receives about a potential compliance issue should emphasize that it is a courtesy notice and you are just reaching out to help educate them about the guidelines. Offer to discuss the issue in person and be open to answering questions.

Newsletters. If you're seeing an increase in a particular violation throughout the community, utilize communication tools to educate homeowners on the issue. I believe that the cases where an owner intentionally violates the rules are rare. Most of the time, noncompliance is due to a lack of understanding.

Town halls. In the spirit of trying to create community, face-to-face communication is critical to the overall mix. If the board is seeing an increase in neighbor-to-neighbor issues or a spike in noncompliance, hold a town hall meeting and talk it through. This will engage your residents in finding a solution and create some responsibility in solving the problems.

HEARINGS

In many states, the requirement for a hearing may be mandatory before fines can be assessed. This process must be conducted impartially, and all parties need to be respectful. Each party needs to know when they will be able to speak and what information should be prepared prior to the meeting. Here are a few tips to ensure the process runs smoothly:

- Give all parties equal time to speak.
- Ensure that the hearing panel is impartial to the situation. If there are conflicts of interest, lay them out at the beginning of the meeting and let all parties know how the panel has addressed them, either how they are overcome, or if the individual is recusing themselves.
- Let the parties know when a decision will be reached and how they will receive notice of the decision.

- The board or hearing panel should be open to compromise. A one-size-fits-all approach is unadvisable. This will create more conflict in the long run.

CONSISTENCY AND FLEXIBILITY

Having these foundations is important, but they will not prevent compliance issues in your community. These are tools that need to be in place for every successful community. So how does the board move toward a consistent but flexible process?

Imagine this: An owner is sent a letter in February that he needs to paint his home. The board takes a hard stance that it needs to be painted in that calendar year, and he has 30 days to confirm that a contractor has been secured. The letters to the owner go unanswered, the manager leaves a message and sends an email, both unanswered. After 30 days, the board sends a final demand and, again, it goes unanswered. After two months, the board begins assessing fines. This process goes on for a few more months.

In September, the owner comes into the management office and explains his family had a new baby born in February, and that the family has been dealing with the failing health of his wife's parents. He is asking for leniency and explains that the mounting expenses for his family will not allow him to get the required maintenance completed this year.

How should the manager and board respond?

Don't confuse "how should" with "how can." The board easily can explain to this owner that the rules are the rules, and he needs to comply. It can continue to assess fines to the owner until the work is

completed, and it can enforce a strict interpretation of the guidelines.

However, that's not what a board should do. What will the relationship with the owner be when the situation is resolved? Will the family believe it lives in a place that promotes community spirit or that the family lives among neighbors who have empathy for their life circumstances? Will this decision enhance the community's reputation?

You can easily fill in the blanks on these questions. The board should have face-to-face conversations with this owner and come to a compromise—one that works for the owner but also meets the community guidelines and ultimately achieves compliance having the home painted.

There are examples that might be more extreme than an extended timeline for painting a home. The board may have to be flexible on blatant violations of the guidelines that have a bigger impact on the neighbors, and it's always my recommendation that the parties try to find middle ground and agree on timelines for compliance. These face-to-face conversations can be contentious at the time, and the parties might be reluctant to get around the table, but board members and managers need to get comfortable with leading these conversations and helping communities and owners find a way to yes—from both sides.

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