



Directors may wish to review minutes carefully to ensure they are accurate and complete. Other documents used to record policies or transactions or that informs the decision, also should be maintained.

Directors have dual purposes for keeping records: 1. They provide an essential history for the association to understand what was done, when, and why; and 2. Should a challenge to a decision arise, they document how the board fulfilled its fiduciary role.

### Prohibited acts

Directors may not:

- act “for reasons of self-interest, gain, prejudice or revenge.”
- commit an **act or omission** that amounts to “incompetence, negligence or gross negligence.” NAC 116.405.

### Legal protections for directors

The association’s corporate structure affords directors and officers certain protections, some of which are stated explicitly in NRS 116:

**Liability** – The association must provide legal defense and indemnification from losses for directors unless it is proven the director acted with “willful or wanton misfeasance or with gross negligence.”

Also, directors are not personally liable to victims of crime occurring on the property.

**Punitive damages** – These may not be recovered against a director acting in his or her official capacity. This protection does not prohibit disciplinary action from being taken by the Commission on Common-Interest Communities and Condominium Hotels.

**For updates and more information, please visit our Web site at: [www.red.state.nv.us](http://www.red.state.nv.us)**

State of Nevada  
 Department of Business and Industry  
 Real Estate Division  
 Office of the Ombudsman for Owners in  
 Common-Interest Communities and  
 Condominium Hotels  
 2501 East Sahara Avenue Suite 202  
 Las Vegas, Nevada 89104-4137  
 Statewide toll free: 877-829-9907  
 Telephone: 702-486-4480  
 Facsimile: 702-486-4520  
 www.red.nv.gov  
 CICOmbudsman@red.nv.gov



## FIDUCIARY DUTY



### Association directors as decision makers



The primary duty of a board of directors is to make decisions on behalf of its homeowners’ association. In the performance of this duty, board members and officers must serve as fiduciaries.

### What is a fiduciary?

A fiduciary has a duty to act for someone else’s benefit, while subordinating one’s personal interests to that of the other person.

In associations, it applies to the executive board of directors, officers and community managers acting in their official capacities.

Being a fiduciary requires a certain code of conduct. Directors must be open, honest and diligent in their duties, stay informed about issues affecting their associations, and reach decisions using sound business judgment. Doing so protects not only the association, but also the director, who may be held accountable for failing to adhere to this standard.

## What are a fiduciary's requirements?

In Nevada, the requirements of a fiduciary are specified in NRS 116.3103:

[M]embers of the executive board are fiduciaries and shall act on an informed basis, in good faith and in the honest belief that their actions are in the best interest of the association. Officers and members of the executive board:

- a. Are required to exercise the ordinary and reasonable care of officers and directors of a nonprofit corporation, subject to the business-judgment rule; and
- b. Are subject to conflict of interest rules governing the officers and directors of a nonprofit corporation organized under the law of this State.

It is essential that a director understand each component of this duty:

1. **Business-judgment rule** – The standard for a board's decision-making is to apply the "reasonable person" test. Would a reasonable and prudent person make a similar decision under similar circumstances? Directors are presumed to be exercising sound business judgment if their actions can be defended as being in the best interest of the association. Generally, directors have broad discretion to make decisions so long as they can meet this standard.

2. **Act on an informed basis** – For any association issue, the board must first make some kind of appropriate inquiry. This will vary depending upon the type of decision and the weight of its consequences. Directors should also have a general understanding of the scope of their authority and options available to them.

3. **Use of experts** – Some decisions involves matters beyond the directors' expertise. Experts may include attorneys, accountants, reserve study specialists, insurance agents, contractors, or anyone else whose specialized

knowledge is essential to a decision before a board.

4. **Duty of care** – In exercising "ordinary and reasonable care," boards must identify risks and avoid actions that may lead to loss or harm to the association. Even a lack of action, such as deferred maintenance or failure to establish internal financial controls, may compromise the association's assets. Directors cannot always avoid bad outcomes, but must watch out for foreseeable risks.

5. **Duty of loyalty** – Directors must avoid self-dealing, conflicts of interest, or even the appearance of conflict of interest. This includes disclosing any personal interests that may **appear** to influence a decision before that decision is made. If a director stands to gain personally from a decision, then he or she must abstain from voting on the matter as well. NRS 116.31084.

Finally, directors may never directly contract for services, goods or financing with the association.

6. **Duty of confidentiality** – Directors has access to association records that are considered privileged, meaning the information is available only to certain people and only for certain purposes. This includes any information relating to a unit's owner, including specific violations; personnel records and draft documents. Discussions with attorneys over legal strategy may also be confidential.

Those who have access to privileged information have a duty to ensure it remains confidential. They are also obliged not to use the information for personal purposes. Even when the director leaves the board or the community, they may not breach this duty.

7. **Act within scope of authority** – Associations exist for a specific purpose. Often, this is stated explicitly in the **covenants, conditions and restrictions**

(CC&Rs). The board exists to execute the provisions of the governing documents, but must ensure their actions are within their scope. Further restrictions exist in NRS 116.3102, which limit an association's powers.

## What others requirements are there?

Directors serve as volunteers and may not receive compensation of any kind. They may be reimbursed for expenses they incur as a result of performing their duties.

Further, directors have a duty to educate themselves generally on association business so that they can render informed decisions.

The Ombudsman as well as private groups provide classes and publications that explain various facets of association business.

## What is a director required to learn?

There is only one specific educational requirement: Upon election, re-election or appointment, directors must familiarize themselves with the association's governing documents as well as NRS 116 and its regulations. Within 90 days, the directors must sign a copy of Form 602, Declaration of Certification, stating they have read and understood those documents and laws to the best of their ability. A copy of this form is kept by the association and another copy is sent to the Ombudsman's Office with the association's registration when it comes due.

## Keep a record of decisions

Documenting decision making is almost as important as the decision itself. Meeting minutes are essential to this process, reflecting how directors voted and the substance of their comments.