

WHAT IS A FIDUCIARY AND WHAT DOES IT MEAN FOR A BOARD MEMBER TO BE ONE WHEN WE ARE TALKING ABOUT THE FINANCIAL HEALTH OF THE ASSOCIATION?

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7-17-16

Many times we hear directors state that they ran to be a director on their board to lower the assessments and keep them down clearly not understanding that as Fiduciaries, the board owes the owners the duty of good faith, trust, confidence and candor. As fiduciaries, it is the highest standard there is in law when dealing with other's property and money.

Over 20,000 years ago, Aristotle recognized that an individual must have the virtues of courage and temperance to achieve the welfare of others and this is exactly what directors must do when they are elected to become a member of their homeowner's association's board, regardless of where it is located.

The challenge of leadership in difficult situations such as confronting one's neighbors and friends, imposing financial demands on oneself and one's neighbors, assuming the risk of failure in the controversy and avoiding the temptation to procrastinate can be difficult. NRS 116.3103 requires the board to follow and are subject to the Business Judgment Rule, which shields each director from liability as long as they acted in good faith. It is the presumption that in making business decisions not involving direct self-interest or self-dealing, the directors act on an informed basis, in good faith and in the honest belief that their actions are in the corporation's best interest.

In Nevada, since the association is required to have a new reserve study performed every five years the association knows where they stand. NRS 116.31152, section 1 states the following.

1. The executive board shall:
 - (a) At least every 5 years, cause to be conducted a study of the reserves required to repair, replace and restore the major components of the common elements and any other portion of the common interest community that the association is obligated to maintain, repair replace or restore.

The statute further goes on to state that the board shall at least annually, review the results of that study and determine whether the funds that their association has are in line with the reserve study recommendations and are therefore sufficient to **properly** maintain the same common elements.

NAC 116.425, Section 2 goes on to state what the Commission for Common Interest Communities and Condo Hotels considers adequate reserve funds, which is to be **at the level described in the governing documents and in a reserve study** and without using the funds from the operating budget or without special assessments unless there is an unforeseen catastrophic event.

A new member of the board, without any training, may not know of this duty and since he or she ran on the platform that we need to lower our assessments could find themselves as not only a bad fiduciary, but in violation of Nevada law.

In looking for a new home, most people will look at the entrance of the community first, secondly the path getting them to the home for sale, the neighboring homes surrounding the target home and lastly

the home. Many times when looking for a home over the years, we did not even drive into a development as we didn't like what we saw leading into the community.

The board as a whole, when dealing with the reserves, must remain focused on the best interest of their Nevada corporation. Loyalty to the corporation means putting personal objectives aside for what is in the best long term need of the association. One of the reasons that former Senator Michael Schneider proposed and got passed NRS116.3115 Section 2 (b) allowing the board to levy a special reserve assessment without the vote of the owners was that he did understand that most owners are not going to vote to increase payments to the association. As fiduciaries, the board does not have a choice. This must, however, be based on what the reserve study says.

Doesn't it make sense that if the developer had funded the reserves from day one adequately, in accordance with the law, and all future boards did the same that associations wouldn't find themselves in total disrepair with no funds to take care of anything. Ultimately, the delay in taking care of components costs the owners more as continued maintenance costs less than major repairs to fix and then maintain. Nevada's reserve funding laws were enacted in 1999 and associations' have had 16 years, at the time of this article, to get where they need to be.

Please don't be one of those boards who puts your owners at risk and who continue to hurt the property values of all homes because you didn't understand the importance of decisions when sitting on this board of directors.

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