


**Board Member Basics:  
HOA 101**

**Presented for: City of Greeley**

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**What is a Community Association?**

- A nonprofit corporation
- A business
- A community
- A neighborhood



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**Various Roles in a Community Association**

- Owners
- Board of Directors & Officers
- Committees
- Community Association Manager



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**What do the Owners do?**

- Vote on specific things
  - As allowed by the governing documents
  - As required per Colorado law
- All other action of the Association taken by Board




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**What does the Board do?**

- Driven by governing documents and state law
  - C.R.S. §7-128-101, et al; C.R.S. §38-33.3-302
  - Enforce governing documents
  - Maintenance obligations
  - Levy assessments/ manage finances
  - Provide services
  - Oversee managing agent




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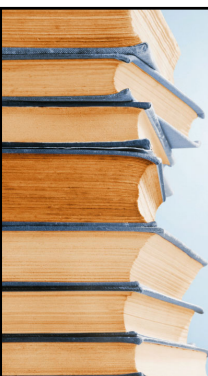
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**What do the Officers do?**

- C.R.S. §7-128-301 and 302
- Named officers have to be Board members
- Bylaws prescribe specific duties
- Duties of any officer can be delegated to the Managing Agent, a committee, or another Board member




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### What do Committee Members do?

- C.R.S. §7-128-101
- Appointed to assist with Board duties
- Committee chairs must meet same qualifications as Board Members
- Charter defines scope of authority/duties
  - Exception: Architectural Review Committee
  - scope of authority/ duties defined in Declaration




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### What does the Community Association Manager do?

- Administrative arm of the Board
- Take direction from the Board of Directors
- Provide input and expertise
- Manage day-to-day operations
- Manager licensing




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### Tools of the Trade:

- Your Governing Documents
- Colorado law





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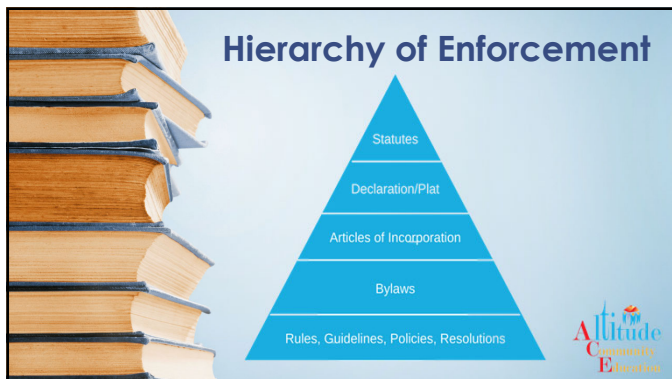
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**Statutes**

- Colorado Common Interest Ownership Act ("CCIOA")
  - Pre-CCIOA, Created Before July 1, 1992
    - Provisions in C.R.S. §38-33.3-117 apply
  - Post-CCIOA, Created on or after July 1, 1992
- Colorado Revised Nonprofit Corporation Act

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**Recorded Plat/Map**

- Required
- Recorded with County Clerk and Recorder
- Location of Unit and Common Elements
- Sometimes maintenance responsibilities
- Sometimes easements

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### Declaration (Covenants, CC&Rs)

- Recorded with County Clerk and Recorder
- "Runs with the land"
- Creates rights/obligations
  - Maintenance/Insurance
  - Board Authority
  - Assessments
  - Use Restrictions
  - Architectural Review



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### Articles of Incorporation

- Filed with Secretary of State
- Birth certificate of association
- General purposes & powers
- Limited liability provisions
- Dissolution provisions



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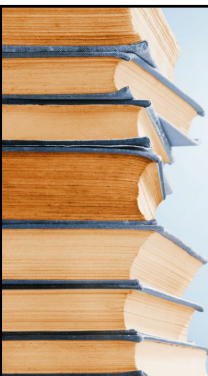
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### Bylaws

- Operational manual
- Membership requirements
- Meeting requirements
- Voting rights
- Election of board members
- General Board powers and duties



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**Rules and Regulations**

- Typically established by board
- Clarification; Behavior

**Architectural/Design Guidelines**

- Rules for receipt, review and response to ARC submissions, as well as specifications for particular improvements




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**Policies & Procedures**

- Established by Board
- Nine Required Policies under CCIOA:

1. Adoption of Rules, Regs, Policies	6. Inspection of Records
2. <b>Collection</b>	7. Investment of Reserves
3. Conflict of Interest	8. Alternative Dispute Resolution ("ADR")
4. Conduct of Meetings	9. Reserve Study
5. <b>Enforcement &amp; Fine</b>	




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**BOARD MEETINGS**





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**Board Meetings -General**

- Notice
- Quorum
- Proxies
- Open to Members (except Executive Session)
- Special Meetings
- Working Sessions




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**Executive Session**

- C.R.S. §38-33.3-308(4)
- Reasons limited to:
  - Matters regarding employees
  - Management contract
  - Attorney-client privileged discussion
  - Discussion of written or oral communication from legal counsel




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**Executive Session**

- Reasons limited to (cont.):
  - Investigation of misconduct
  - Matters which constitute invasion of individual privacy (including violation hearings and voting on whether to turn over account to collections)
  - Matters constitutionally, statutorily or judicially protected from public disclosure




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### Executive Session

- Requirements:
  - Minutes: Category of discussion; Any action taken
  - No rule or regulation, amendment to Articles or Bylaws, may be adopted
  - Notes kept during executive session can be withheld from inspection




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### Owner Comment

- Prior to taking action:
  - Let Owners provide input
  - When: During homeowner forum or right before you vote, as long as it is prior to you voting
  - Reasonable number of Owners




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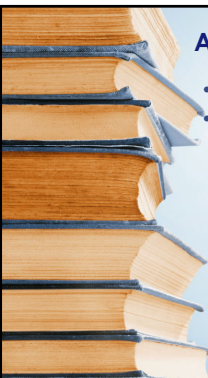
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### Action Without Meeting (i.e. by email)

- **Check Bylaws** first for procedure
- Nonprofit Act: C.R.S. §7-128-202
  - Email to all directors with: (i) proposed action, (ii) deadline, (iii) failure to respond means you've abstained in writing
  - By deadline: (i) Vote, (ii) Fail to respond, (iii) No demand for meeting
  - Yes votes must equal or exceed # of votes needed to approve action if ALL directors in office voted




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## Two Overarching Principles to Keep in Mind Regarding Liability



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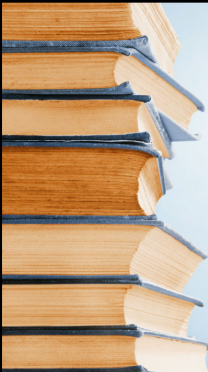
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## What are the Fiduciary Duties of Board members?

- Duty of Care
- Duty of Loyalty (conflicts of interest)
- Duty of Obedience
- Duty of Confidentiality



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**Duty of Care  
(standard of conduct)**

- A Director shall discharge his/her duties:
  - In good faith
  - With the best interests of the association
  - Prudently (i.e., informed)




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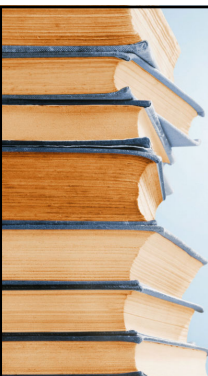
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**How to Be Informed  
Examples:**

- Read, be familiar with, and follow governing documents
- Be familiar with & follow laws
- Attend meetings & participate
- Hire & follow advice from qualified professionals
- Read & understand board packets




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**Entitled to rely on:**

- Information
- Opinions
- Reports
- Statements

**Presented by :**

- Experts
- Committee that director believes merits confidence




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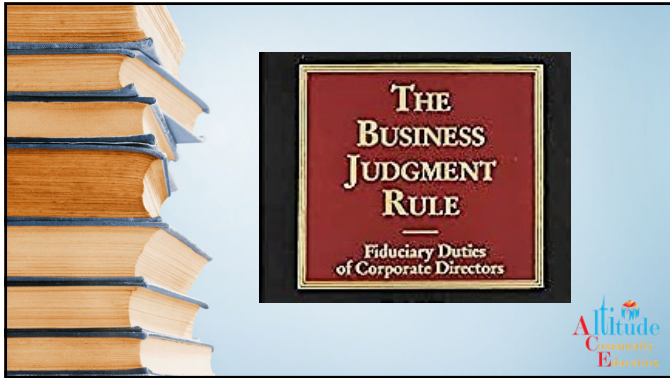
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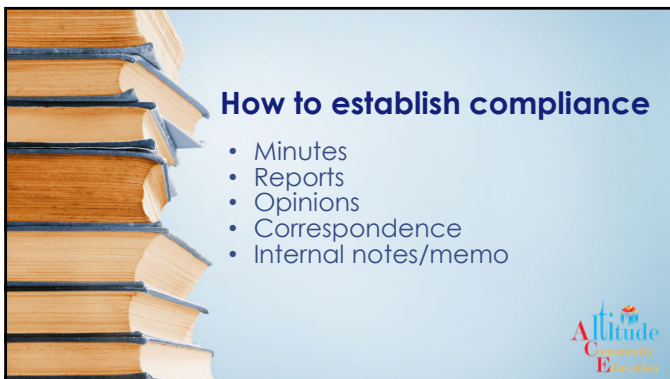
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**Duty of Loyalty**  
**What is a conflict of interest?**

A contract, transaction, or other financial relationship between:

- Association and director
- Association and person related to director
- Association and entity in which director has a financial interest




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**A conflicting interest transaction cannot be voided if:**

- Material facts of conflict are known and disclosed:
  - To Board OR to Members, AND
  - Board OR Members, as applicable, authorizes, approves, or ratifies in good faith
- The transaction is fair to the association




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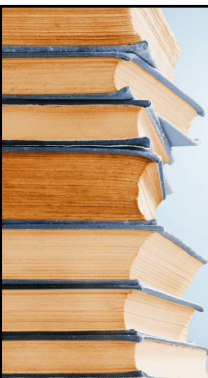
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**Practical vs. Legal**

- Disclose conflict
- Abstain from voting
- Don't participate in discussion
- Leave meeting during discussion/vote
- Have policy in place before (required per law)




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### Tips to Safeguard You and Your Association



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### 1. Obtain broad Directors and Officers' Liability Insurance (D&O)

- Why?
- Parties covered
- Types of claims
- Amounts
- Indemnification Provision



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### 2. Get a Document Review

- Why?
- Review documents for:
  - Noncompliance with law
  - Obsolete terms
  - Gaps & Clarification
  - Reflect today's community
- Written report and meeting with board to discuss findings
- **Amend your documents!!**



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**3. Get an insurance audit:**

- Review of governing documents
- Review all insurance policies
- Review related endorsements and compare documents to coverage
- Identify deficiencies and gaps
- Identify overly broad coverage
- Written Summary Meeting with board



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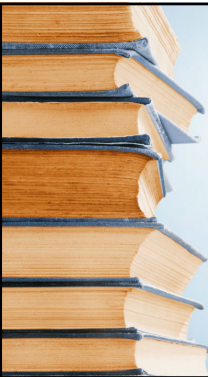
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**4. ALWAYS comply with and understand your governing documents .... or AMEND if applicable.**



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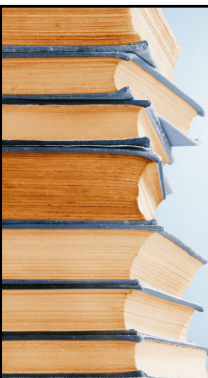
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**5. Make informed and prudent decisions....and PAPER TRAIL**



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**TOP 3 THINGS BOARD MEMBERS SHOULD NOT DO**



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**1. DON'T ACT IN A VACUUM**

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**Why?**



**LEGAL REQUIREMENTS**



**PRACTICAL CONSEQUENCES**



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## Legal Requirements

Is there a legal requirement to seek input?

C.R.S. §38-33.3-308 (2.5)(b) – Owner participation at Board meetings

C.R.S. §38-33.3-209.5 (1)(b)(VII)– Adoption of rules, regulations, and policies




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## Practical Consequences

What are the practical consequences of making decisions in a vacuum?

Blindsided

Lose credibility

Financial Consequences




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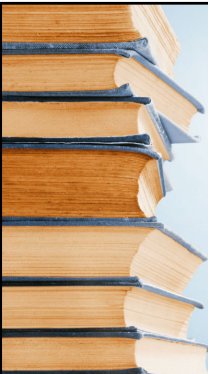
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## Do this instead...




SEEK INPUT



USE COMMITTEES



BE TRANSPARENT




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**Do you know whether you are a micromanager?**

1. Resist delegating work
2. Ask for frequent updates
3. Look at every detail rather than focusing on bigger perspective
4. Prefer to be cc'd on every email
5. Have an unusually high board turnover/manager turnover
6. Suggest unrealistic deadlines
7. Become irritable when decision are made independently without your input
8. Feel that if a task is to be done right, you should do it yourself
9. Communicate with board members/manager outside of meetings via text
10. Re-do the work of manager/other Board members after it's finished




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### Legal Requirements & Practical Consequences

- Legal Requirements?
- Practical Consequences
  - Creates more paperwork than necessary
  - Wastes time
  - Reduces motivation
  - Lowers creativity and efficiency
  - Shows lack of trust
  - Might lose people




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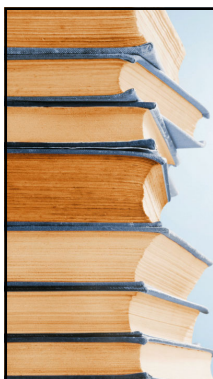
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**Do this instead...**

**AVOID DAY-TO-DAY DECISION MAKING**

**MEET ONLY DURING SCHEDULED MEETINGS**

**TRUST IN OTHERS**



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**3. DON'T BE A BULLY**

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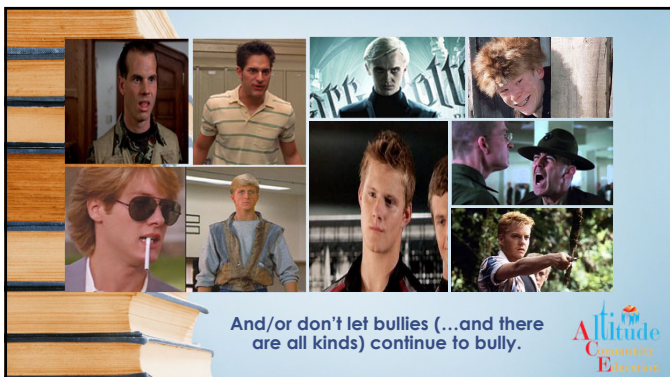
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**And/or don't let bullies (...and there are all kinds) continue to bully.**



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## The Intimidator

1. Intimidates through behavior
2. Shouting, foul language, browbeat
3. Some see as "impassioned"

**Negative Impact:** Board Members quit




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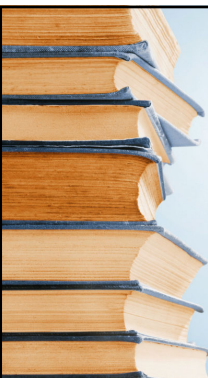
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## The "Get-a-Life" Bully

1. Starts off as advocate – then becomes over-involved
2. An ego thing
3. Position of control

**Negative Impact:** Contractors / Vendors Quit




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## The Expert

1. Bully through facts and special expertise
2. Using knowledge as tools to their advantage
3. Like "Get-a-Life" bully, about ego
4. Expertise – but might not be in the right context

**Negative Impact:** Could remove liability protection




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### Legal Requirements & Practical Consequences

- Legal Requirements?
- Practical Consequences
  - Disruptive Meetings
  - Management/vendors get caught in the middle
  - Drive members off the Board
  - Keeps owners from joining – not worth it




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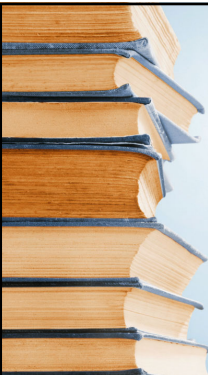
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### Do this instead...




**CONFRONT  
EARLY ON**



**BE SPECIFIC  
ABOUT THE  
BEHAVIOR**



**REMOVE**




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### Questions?

### Thank you!

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[www.altitude.law](http://www.altitude.law)




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